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ROUNDTABLE DISCUSSIONS

ANCSA & 1991

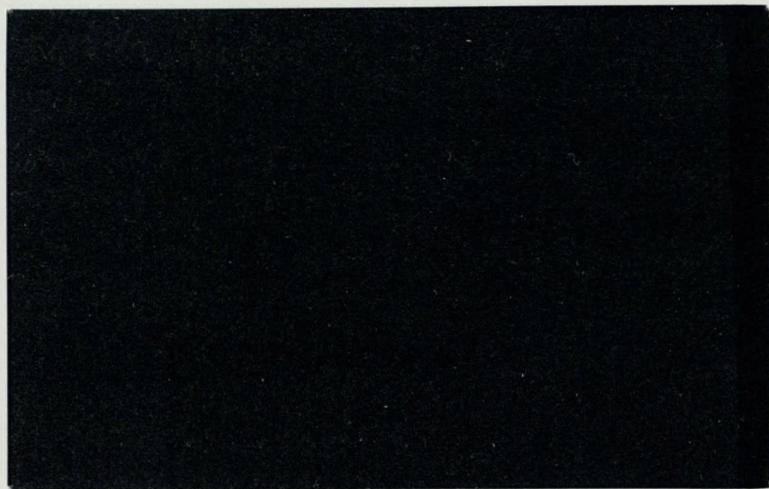
VOLUME XX

ANCHORAGE

NOVEMBER 14, 1984

ALASKA NATIVE REVIEW COMMISSION
HON. THOMAS R. BERGER
COMMISSIONER

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Transcripts of the Alaska Native Review Commission are produced in two series. Those in Roman numerals are for the Roundtable Discussions. Those in Arabic numbers are for the Village Meetings.

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Roundtable on ANCSA & 1991

Anchorage - November 14 - 16, 1984

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1 (NOVEMBER 14, 1984)

2 (TAPE 1, SIDE A)

3 MR. BERGER: Well, maybe I could
4 call our gathering to order. My name's Tom Berger, and I want to
5 welcome all of you here today. And let me say at the outset that
6 this roundtable is sponsored jointly by the Alaska Native Review
7 Commission and the Alaska Humanities Forum. And I want to thank
8 the Humanities Forum for the assistance and support that it has
9 provided throughout the work of the Alaska Native Review
10 Commission. Perhaps you would allow me just to say a few words
11 by way of an opening statement and then, perhaps I might make
12 some suggestions about our agenda and then we can introduce
13 ourselves. I've been traveling around the state since the
14 beginning of the year and we've held hearings in 46 villages and
15 towns, and more than 900 Alaska Natives have testified at those
16 hearings. And it is apparent that they are apprehensive about
17 1991, and virtually all of them, even the great majority of urban
18 Natives, wish to see Native ancestral lands remain in Native
19 hands to be passed on from generation to generation, and they
20 want children born since 1971 to participate fully in the
21 settlement.

22 Well, I think we all have gotten that message and I
23 don't see any point in dwelling on it, but let me turn to some of
24 the questions in my mind and hope that perhaps we can consider
25 them over the next three days. If there are no changes in ANCSA,
what is likely to happen after 1991? Everybody's worried about
1991, but what is really likely to happen then? Will the Native
corporations be the target of takeover bids -- by whom? Will
shareholders sell? And if they do sell, to whom? Are the 1980
amendments relating to a family and corporate right of first
refusal likely to be effective? Are the 1980 amendments relating
to the restriction of voting rights likely to be effective? And
what about the land bank provisions of ANILCA. Is this an



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1 effective way of immunizing subsistence lands from taxation?
2 Then there's the question that people keep bringing up. They
3 say, "Well, you keep talking about 1991", but they say, "Will the
4 corporations -- all of them, survive until 1991? Is there a
5 possibility of corporate failures before 1991? And even if
6 changes are made in ANCSA, will there be a possibility of
7 corporate failures after 1991? And are corporate failures likely
8 to be the route by which Native lands are lost, quite apart from
9 takeovers and the possibility of taxation of Native lands, 20
10 years after conveyance?"

11 Well, the AFN has at its recent convention, advanced a
12 series of resolutions for consideration by its membership. Other
13 proposals have been made in other quarters and I hope that we
14 will be able to take a look at them. We have people here from
15 regional corporations and from village corporations. We have
16 economists and legal experts. I know all of you have been
17 thinking about 1991 and the issues it raises. Among others that
18 I think should be addressed, are these, and I mention these
19 because there are many questions that come up, but these might be
20 overlooked otherwise. Given the desire expressed in many
21 villages to unite, under village ownership, the surface and
22 subsurface estate of village lands, do the proposals to transfer
23 ANCSA lands or ANCSA shares to IRAs, non-profit corporations or
24 other entities meet this concern? Can it be met? Perhaps not, I
25 don't know, but I can tell you that in most villages I've been
to, there's a definite feeling that the surface and subsurface
estate should be united under village ownership. That's
something that I hope is not overlooked in discussion. Wherever
I've been, everybody seems to agree that the acquisition by
outsiders -- by people from New York or Tokyo or Seattle or --
God forbid, Anchorage -- the acquisition by outsiders of control
of Native corporations and Native lands would be a bad thing.



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1 But, perhaps you'd be willing to address the question:
2 what about the possibility of acquisition by a very few Native
3 people of control of Native corporations and Native lands? Would
4 that be a bad thing? In 1971, Congress conferred ownership of
5 the shares in ANCSA corporations on Alaska Natives then alive.
6 Should any options regarding the future be determined solely by
7 the present body of shareholders with voting rights? It has
8 always seemed to me kind of a conundrum. Congress said in 1971,
9 "Well, we'll give all the people who are alive shares in these
10 corporations and they will control Native ancestral lands through
11 their shareholdings." There's a widespread feeling that that was
12 a mistake, yet proposals to find a way out of that dilemma rest
13 on obtaining the consent of the majority of those very same
14 people -- those who have shares and who are entitled to vote
15 those shares. Well, there are many other questions that I'm sure
16 you wish to raise, but those are some that have been on my mind.
17 Maybe we could just introduce ourselves and then take a look at
18 the agenda that I've proposed. Let me start by saying my name's
19 Tom Berger, and I have been retained by the Inuit Circumpolar
20 Conference and the World Council of Indigenous People to conduct
21 this review of ANCSA. Everybody knows that, I think, so -- but
22 moving to the right...

17 MR. CASE: My name is David Case.
18 I'm an attorney in private practice. I'm also counsel to the
19 Alaska Native Review Commission.

20 MR. GOODWIN: I'm Paul Goodwin.
21 I am the Subsistence and Natural Resource Director at Rural CAP
22 and also a special assistant to the Commissioner of Education on
Rural and Native education.

23 MR. GARBER: I'm Bart Garber.
24 I'm an attorney, presently teaching at the University of Alaska.
I'm from Tyonek, living in Anchorage.

25



1 MS. ELIZABETH JOHNSTON: My name
2 is Elizabeth Johnston. I'm Vice President and General Counsel
3 for Bristol Bay Native Corporation, a regional corporation.

4 MR. McNEIL: I'm Chris McNeil of
5 Tlingit Niska. I'm Vice President and General Counsel of
6 Sealaska Corporation.

7 MR. LOWDENSLAGER: I'm Paul
8 Lowdenslager, Professor of Political Science, Western State
9 College, Colorado.

10 Mr. SHANKS: I'm Roland Shanks.
11 I'm Land Manager with Eklutna, Inc.

12 MS. MARLENE JOHNSON: I'm Marlene
13 Johnson from Sealaska Corporation, Vice Chairman.

14 MR. ANDERS: My name is Gary
15 Anders. I'm an Associate Professor of Economics and Finance at
16 the University of Alaska-Juneau.

17 MR. TAYLOR: I'm Jack Taylor an
18 Associate Professor of Management, University of
19 Alaska-Fairbanks.

20 MR. STRONG: My name is Tony
21 Strong. I'm a private attorney. I live in Klukwan and have a
22 practice in Juneau.

23 MR. HAGEMAN: I'm Drew Hageman.
24 I'm an Assistant Professor of Business Administration at the
25 University of Alaska-Fairbanks.

MR. C. JOHNSON: I'm Charlie
Johnson. I'm Chairman of AFN and President of Bering Straits.
I'm not a professor or an attorney. (Laughter)

MR. PRICE: I'm Monroe Price and
I'm Dean at Benjamin Cardozo Law School in New York, and I've
worked with Cook Inlet Region over the last decade on problems
related to the Native Claims Settlement Act.



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1 MR. R. JOHNSON: I'm one of a
2 long line of Johnsons in this group. I'm Ralph Johnson, a Law
3 School Professor at the University of Washington, teaching Indian
4 Law.

4 MR. DEMENTIEFF: I'm Claude
5 Dementieff. I'm the Executive Director of K'oyil'ots'ina,
6 Limited, a consolidation of four villages on the Koyukuk River.
7 That's Huslia, Hughes, Allakaket and Allatna.

7 MR. BERGER: Well, thank you.
8 We're recording everything that's said on tape and it'll be typed
9 up and there'll be a transcript. So, when you speak, if you
10 don't mind grabbing the nearest mike and speaking into it, just
11 as I am doing now, that will make the work of taping the
12 proceedings easier. And they are being videotaped, so, if you
13 have your card facing outward, it means that the camera will pick
14 up your name on the card as well as your face. The agenda that
15 we just put together is just tentative and was designed as simply
16 a way of getting the ball rolling. And you'll see that we
17 already, thankfully, have gotten past the first item: "Opening
18 Remarks", "Introductions." In a moment, I'll ask Bart Garber to
19 make a presentation. We asked him to prepare a short paper in
20 advance, and he will be discussing that. Then we thought we
21 would have some general discussion, and I asked Monroe Price if
22 he would participate in that to help it -- to give us his views,
23 and Nelson Angapak, who can only be here today. He is President
24 of Calista. Well, he said he could only be here today, and so
25 far it seems uncertain that he can be here even today. So we'll
just -- I put some names down, but this is purely arbitrary and
feel free to speak up at any time. This is just a way of giving
some limited structure to what we are doing.

Then this afternoon, I was going to suggest we look at
the question: The outlook after 1991, what will happen if there
are no changes in ANCSA? Will people sell? What is the value of



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1 shares? That is a question that could keep us here forever, but
2 let's just pass -- let's deal with it as -- in a brief way. How
3 adequate are the 1980 amendments? And I thought we might ask
4 among others: John Taylor, Paul Goodwin, Drew Hageman and Gary
5 Anders to tackle some of those questions, but -- then on
6 Thursday, I thought that we might take the liberty of looking at
7 the AFN resolutions and that we would ask Charlie Johnson, Roy
8 Huhndorf, Chris McNeil and Glen Fredericks and Claude Dementieff
9 to address those. But once again, I hope everybody will feel
10 free to talk about these things. And if you have any
11 suggestions about the agenda, feel free to make them; and at
12 breaks in the proceedings, if you have suggestions about the
13 agenda, please free to mention to David Case or to me, or to
14 Rosita Worl, who's also working with us at the Commission but is
15 a little late this morning. On Thursday afternoon, we thought we
16 might ask the people representing the villages to talk a little
17 bit about the way they see 1991. And I put down the names of
18 Dale Stotts, Dolly Garza, Rose Marie Maher, Roland Shanks and
19 Tony Strong. On Friday, I thought we might look at some of the
20 issues that I mentioned in my opening statement a minute ago and
21 other issues, of course, that you might wish to discuss. And to
22 discuss those questions, I put down the names of everybody whose
23 name begins -- whose name's Johnson. I thought that was a good
24 spot. And Daniel Fessler is coming. He is a lawyer from
25 California who's advising the State Statutory Revision Commission
on its corporation -- corporate laws. And I think Bart and -- is
on that too, and Elizabeth Johnston. And Mr. Fessler, I believe,
is coming on Thursday. Glen Fredericks is coming Thursday, Dolly
Garza's coming Thursday, Roy Huhndorf's coming Thursday. So we
will have those people joining us tomorrow. And then Friday
afternoon, I thought we might discuss generally Native
corporations, Native values, and Native lands. So, that's just a
way of starting us off and we expect that as the discussion takes



1 shape, we might make important changes in the agenda. So, with
2 those qualifications, maybe with your permission, I might suggest
3 to Bart Garber that he start us off by giving us his
4 presentation.

5 MR.. GARBER: Thanks. In my class
6 I get to work off my tension by walking all around. I'd just as
7 soon be able to stand, but I'll get this through it sitting down.
8 I know you haven't had much time to take a look at the paper I've
9 written. It is a -- it's a beginning. I'll be actually
10 expanding it come February and there will be the -- I have
11 footnotes that are available probably tomorrow, that still have
12 to be typed up. So if you're curious as to where I get some
13 references, you'll have that soon. You'll also notice when you
14 read through, that you don't see very many references to proposed
15 resolutions or proposed amendments. As a Native myself, and as a
16 person who personally has to walk through the decision in 1991, I
17 thought that it was important to look at that mechanism, look at
18 that value that's in conflict. Those sections in the papers from
19 the attorneys that was left out. It was left to the clients,
20 rightfully so. And I think that it's a significant issue in
21 1991. Also, though, I am an attorney, so there's some analysis
22 that has to come through. I found it very helpful to look
23 through in history. Both legislative history and just a general
24 history to look back. What exactly was intended? So, you'll see
25 in the paper that we would go through and see the formation of
this 20-year limitation. Those specific provisions that start
and give the substance to the 90 -- 1991 provision. I don't have
to go over that very much in here because most people will know
it, but just briefly. The 1991 provision began with regard to
two different things. A restriction on the period -- on the
alienation of stock until 1991 and secondly, there was a
restriction on the taxability of undeveloped lands until 1991.
As you know, both of those provisions are now subject to some



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1 amendment in that the taxation issue has been extended so that
2 it's 20 years from the time of conveyance; and with regard to the
3 alienation of the stock. There are some options now available
4 where regions are able -- and corporations are able to have a
5 buy-back provision or family members can also have a first right
6 of refusal. And there's also the possibility of extending the
7 period of time that non-Natives are unable to vote. The purpose
8 of those restrictions on it's -- on our -- on their face, is to
9 maintain the control and ownership over the corporations and the
10 assets.

11 What I did in the paper though, is to look back and see
12 what it was that -- why was a 20-year provision first put in?
13 What were the aspirations of the Natives at the time that they
14 were first proposing a land settlement? And why was it a
15 corporation that came up? And why was it that, when there was a
16 corporation adopted, that there was a necessity for this 20-year
17 provision? To let you know where we're going to get at the end
18 of this brief discussion, I think that the 20-year provision,
19 really represents the battleground or the period in transition --
20 and it's specifically stated as one -- from a background of
21 communal land holdings of a -- if you will, a communal property
22 memory. Even those of us who've lived in the cities are more
23 familiar with the idea and the concept of private property.
24 There's a transition -- a clear transition that was intended for
25 the 20 years. There's different reasons that were piled on top,
but ultimately what you would have is the transition from a
communal holding, where people aren't able to alienate their
interests, into finally, a situation where individuals have real
property rights in stock that they're able to sell. There's a
conflict there, and it's given rise to these 19 -- these new 1991
issues: the "new-Natives" issue, the elders issue, the issue of
whether you even want to allow the alienation of stock.



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1 I submit that what these are, are really that inner
2 conflict. That conflict between this communal memory and land or
3 that idea that you want to have this community property, versus
4 the ultimate effect of ANCSA, if it does come about and that is
5 the absolute vesting of a private property rights system. Any
6 other person who owns shares in a corporation if it happens to be
7 another company, isn't concerned typically, unless they're a
8 majority shareholder who buys or sells, or who has an interest in
9 the stock. That kind of concern is -- only comes about because
10 you have a greater interest in land. The land and the assets of
11 the corporation have a better -- a deeper value. Later in this
12 paper and later in this discussion, we'll look at some of those
13 specific differences between rights of tribal members and
14 communal property, or rights of communal members, whether they're
15 a tribe or not. We have similarities in even the private
16 property system, versus the kind of rights, private property
17 rights, that are given to shareholders in the form of corporate
18 laws. There are some differences and there are some unique
19 rights that shareholders have that sometimes don't exactly
20 reflect themselves in private property law, but they -- there is
21 -- the core idea is there.

17 I'd just like to start with going back and what I've at
18 least dug up... and many of the people here may actually have
19 attended some of these meetings to find out what was the purpose
20 behind that 20-year provision? And what was the 20-year period
21 of restriction? And what was initially proposed? At least in
22 the written record, the first reference you can find is at the
23 Alaska Task Force Report in January of 1968. The Task Force was
24 put together by the state; although the Governor appointed
25 certain members. The Alaska Federation of Natives participated
and the Secretary of Interior at that time, appointed a delegate
to also participate. They came up with a Senate Bill 2906. The
purpose of the meeting, Willie Hensley at the time was the



1 Chairman... the purpose of the meeting was to try to find some
2 common ground that the state and the federal government and the
3 Natives could agree to, on a system of settling the land claims.

4 You have to put their efforts, though, in the backdrop
5 of history. And that was that the Natives who were going to this
6 meeting, came with an experience with the federal government that
7 wasn't all that rosy. It's granted, the federal government did
8 put lots of money into the community, attempted to try to --
9 particularly in the '60's, put in a different kinds of programs
10 to help and assist Natives. On the economic side, however, the
11 Natives had the impression that federal oversight had not been
12 that helpful. That the businesses that the federal government
13 did help them manage, never made money. That the kind of
14 management system that was available in the federal government
15 was too encumbering. So they came in there with a view against
16 federal oversight. What you have coming out of the Task Force,
17 which as far as I could tell, was only working two or three
18 months on their proposal, was surprisingly, and very close to
19 what finally comes out in 1971, at least in the basic components.
20 The Natives want land, they want money, and they want to control
21 it. There's an initial proposal to have regional corporations
22 and village corporations. Villages are to have the option of
23 being able to use Indian Reorganization Act Councils as their
24 means of receiving lands and money under the settlement. The
25 period of restriction is brought in. The corporations are to be
state business corporations. So on their face, stock would
normally be alienable. However, the period of restriction at
that time for the stock alienation, was a hundred years. And it's
the only time, in the legislative history anyway, that I've been
able to find some fairly straightforward explanation for that
provision. Later on in the House bills and the Senate bills and
as you get into the Congress, there's very honestly no discussion
of their reason for that period of restriction. It's skirted.



1 The issue is skirted. It's only at the very beginnings. And
2 you'll probably wonder: "Well, why do you look at those
3 provisions back then in '68, so -- with so much vigor?" Part of
4 it is, is that we want to find out what it was that the
5 Natives... and we wanted, and the Natives who were working then,
6 wanted to get out of a settlement. Before all of the contact
7 with the Congress, before all of the negotiations and
8 positioning. What was it that they wanted out of the settlement?
9 And what -- and how did they want to accomplish it? That's why
10 I've harped as much as I can on the early history, to find out
11 what it was that they wanted when they went in. 'Cause if -- as
12 you find out, and as most of us are familiar with, Natives got
13 fairly adept at politics after that point. So that there are a
14 number of issues that they use to their advantage to finally
15 obtain a land settlement. Yes, some of the alliances had
16 something to do with it, but as much, it was the use of policy
17 statements by their alleged opposition, using the ideas that the
18 other people believed in and could rationalize. And I talk
19 specifically on this point about Nixon and his idea of
20 self-determination, and the present policy of the federal
21 government was self-determination. The Natives at that time
22 picked that up and really run with it. There is the idea of
23 wanting to be able to decide their own destiny even in 1968. And
24 that is reflected in their reluctance to go with the federal
25 government. The federal government's system of management was
simply too encumbering. They didn't allow the Natives at that
time to fully participate in their own businesses or in their own
activities.

22 So, you've got a hundred-year provision that it starts
23 out as. Barry Jackson and others specifically stated what the
24 purpose of that provision was. And if you look at some of the
25 other provisions in that Senate Bill 2906, the Task Force
Proposal, you can see that the hundred years was intended to be a



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1 transitional period. This specific statement said that it would
2 allow times for tribal groups to ultimately learn to become
3 regular business corporations. Now that's changed some. We've
4 seen that there are separate identities and we've found that
5 these Native corporations -- the business corporations, have
6 their own identities as to the tribal groups. So that idea of
7 assimilating tribes -- of getting the tribal groups as tribes, to
8 change into business corporations, at least on that side, it
9 doesn't continue. But there's -- there still was that idea that
10 it would take a hundred years of being able to learn and educate
11 and become accustomed with a private property system, a system
12 that -- as business corporations under state law. That it would
13 take a hundred years to be able to do that. It also -- and this
14 is kind of interesting, addressed some of the problems that we
15 are currently having with "new Natives." You can see that if
16 there's a period of restriction of a hundred years, there is much
17 less concern that the children will ultimately become
18 shareholders. A hundred years is usually a sufficient period of
19 time for at least two generations to go by, so that inheritant --
20 the inheritance provision is strengthened when you have a longer
21 period of restriction. So there isn't the idea that you need to
22 rush and get new people to have stock when you only have 20 years
23 that you can be certain that you will have the stock to give
24 them. So, in that way the early provisions, they weren't so much
25 concerned with younger children. As a matter of fact, they
specifically set out in the history there, how the stock would go
from generation to generation in talking of terms of a
hundred-year provision.

In the viewpoint of a lawyer and one who deals with the
corporation laws of the state, the early bill was also
interesting. They had the foresight even at that time to know
that it might be necessary for the state to revise its corporate
laws to deal with unique aspects of these Native corporations, so



1 that there was a specific provision there that's stated, and the
2 state was a negotiator here, that the state laws would be
3 flexible with regard to these corporations. And that they would
4 take into account that this hundred years, this transition
5 period, would probably bring various kinds of problems where the
6 Natives and their new corporations would not be able to survive,
7 under the laws of the state, as they were set out for normal
8 business corporations. They didn't say what provisions had to be
9 changed, but they did recognize that there might be that problem.

8 Even at this early point, the third major provision
9 that the AFN at that point wanted, was control over these
10 corporations. Thus you did have that idea that the hundred-year
11 provision would allow for education and also the maintenance of
12 that control. With a hundred-year provision, there wasn't very
13 much discussion about the extension of that. There was the
14 assumption that these corporations at the end of the 100 years,
15 would be normal business corporations, without any need for
16 special protections. However, that idea of destiny, of being
17 able to confirm your own destiny continues, and it gains strength
18 through the late '60's and early '70's. There's some
19 significance there, because even now, some of the focus on being
20 able to maintain control over the corporations, is also this idea
21 of Natives being able to determine their own destiny.

18 My question to you is, who -- who makes the decision?
19 Under the current resolutions we say that shareholders do and
20 that the actions that are necessary to be taken are a majority of
21 a quorum. That tells me that, as little as 15 percent of the
22 Natives who are shareholders, will make decisions about the
23 destiny of Natives and the land that they own. Given the fact
24 that the number of Natives will double, that 15 percent is then
25 reduced to five -- to six percent of the Natives who live, who
could essentially make the decision about what happens with land.
I don't know if anyone will pick up on the idea, but the



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1 self-determination policy does, under ANCSA, is something
2 different and it's the next major focus in the paper. From what
3 the federal government thought the self-determination policy is
4 and what self-determination policy as a pure concept is. Self
5 determination in its purest form, Vine Deloria has said, is
6 "absolute tribal autonomy and economic self-sufficiency without
7 the support of the federal government. It's a people being able
8 to determine on their own, under the conditions that they set,
9 what they want to do." My question is, does that -- does
10 self-determination policy, does it have anything to do with what
11 we're doing now, or are we just working with a bunch of technical
12 little problems that you're going to pay people like me and other
13 people to deal with? Or, is there something else? Is there a
14 larger philosophy that can be used to guide the actions that
15 we're going to be taking over the next few years, in guiding us
16 to some kind of solution, individually or otherwise to 1991?

13 The analysis that comes out in self-determination
14 policy is that self-determination under ANCSA is not true
15 self-determination. First of all, we are restricted in our
16 choices by federal law and by state law. There are certain
17 inherent limitations that the general population as a whole has
18 to live with. I can see that. But there are special provisions
19 that restrict us under the federal law and there are special
20 provisions under the state law that arise from primarily the
21 state corporate statutes that restrict the full scope of choices
22 that are available to us in reaching solutions to 1991. We found
23 it necessary to constantly approach Congress to get their
24 approval for changes because we need specific authorization from
25 Congress to change the restrictions that come up in ANCSA.
Likewise, under state law we had -- we will have to go to the
state or indirectly go the federal government to get them to
order the state to reduce the restrictions that arise in state
law.



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1 Some of these specifically, come about because under
2 state law -- we'll start with state law -- come from the rights
3 that shareholders have in corporations. We can see the most
4 significant one that affects us is this right to vote and the
5 right to dissent. David, in his new book has essentially
6 contended that this dissenting right may actually preclude, and
7 it may be the most significant reason why it's necessary to
8 eliminate it in that 20 years. That, under a dissenter's right
9 is -- if there is a substantial or a -- an extraordinary
10 conveyance of corporate assets and we'll take a specific example:
11 If we want for instance, to implement an option for a village
12 corporation or a region for that matter, to convey their assets
13 over to an alternative entity, we require a vote of the
14 shareholders. If we didn't eliminate dissenters rights, if they
15 object, and if it is deemed to be a substantial portion of the
16 corporate assets, the dissenters usually has the right to have
17 his stock purchased back. Well, under the 1991 formula we can't
18 purchase stock until 1991 so, unless there's a change in the
19 state statutes, if that person has dissenter's rights and if we
20 can't buy the stock back, the natural assumption is, is that the
21 court is probably going to say, "You can't make those kinds of
22 significant changes without some special authorization from the
23 Congress or if the state wants to go out on a limb and make that
24 kind of change, then you're going to have to get special
25 authorization." So, there -- in the specific instances -- is how
the state corporate laws restrict the choices that we have
available to us.

 The federal law has many specific provisions that
restrict us. I mean the obvious ones are the -- is the 20-year
alienation period. Now that goes both ways. I don't come from
either one side or the other as far as the political spectrum
goes. If stock is -- you have a 20-year provision there where
many people wish didn't exist even now. They want to be able to



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1 sell stock now. So it's a restriction for them. For others it's
2 deemed a restriction from the opposite side, and that is they
3 fear the idea that stock will be sold in twenty years. The thing
4 that's common with both, though, is that the number -- the
5 choices are restricted. This really isn't self-determination by
6 Natives. We have too many other people involved and now that
7 goes back from the very first Task Force reports and bills that
8 were drawn up where Natives, from the very beginning, in
9 acquiring a land settlement had to appease other parties 'til the
10 very end in the '70's, when we had to appease environmental
11 interests so that the choice is never truly and solely ours about
12 what to do. Now, the other aspect about self-determination; I've
13 said that absolute -- that true self-determination, at least in
14 Vine Deloria's view, is absolute tribal autonomy as well as the
15 idea of economic self-sufficiency. ANCSA is -- in
16 self-determination policy under the federal law, really
17 emphasizes -- because of the kinds of contacts the federal
18 government has had with tribal people -- emphasizes the first
19 component, the tribal autonomy component and mixes in the
20 economic self sufficiency component because they are working with
21 tribal groups all the time -- communal tribal groups. In the
22 Alaska Native Claims Settlement Act we have a unique situation
23 where we have given at least inchoate rights to shareholders to
24 have individual rights. They are not bound by the norms and
25 customs and traditions of tribal law in the operations of their
state corporations. They are bound by state and federal laws.

So, ANCSA, in my view, is a different kind of
self-determination. It's self-determination of the individual
Native or corporations. It doesn't look toward
self-determination of the tribe. The tribe has no part in ANCSA.
The tribe has no oversight provisions, has no ability to affect
the decisions of the corporation. Now you say, "Tribe, what is
that?" I say, "tribe", as a corporate body of people who are in



1 the ANCSA corporations. Certainly you can go to the definitions
2 section in ANCSA and it says, that a village holds land on behalf
3 of a tribe and a tribe is defined -- or a tribe is one of the
4 sub-components of who it is that's a village, who it is that they
5 have either a band, a village or number of other things and a
6 village corporation in specific, is supposed to hold on behalf of
7 that village. Tribe, in my view, is this larger communal -- this
8 corporate interest where there is a interest that's separate from
9 even the individual members. This is made clear when you look at
10 the kind of rights that individual Natives have in a communal
11 system to property. They don't have the right to be able to
12 alienate that property on their own. If they don't have that
13 right, and they don't have the right also to manage that property
14 on their own -- it's managed by the governing body of a tribe and
15 the governing body is the only one that's left to make a decision
16 with what happens to that land. To at least, try to bring it up
17 out of the philosophical, we see some of this -- some of the
18 purists on both sides fighting right now so that you have the
19 tribal groups, the United Tribes who are working, and you have
20 the AFN and the corporations who have a corporate viewpoint --
21 they're fighting at that level. We see that there definitely is
22 a larger communal body. A corporate body of tribal interests in
23 traditional lands and it doesn't have a way to express itself in
24 ANCSA. It is -- tribes are not corporate shareholders. They
25 have no special provision in ANCSA that says that they are able
to comment on what a corporation does; instead, the only people
who have the rights are individual shareholders. But individual
shareholders don't, in and of themselves, speak for a tribe. A
tribe, a definition -- has a different -- has a body of its own,
and it has its own viewpoint and it limits even its own members.
Now, it's easy to get confused because there are some
commonalities between a tribal body and a corporate body. They
hold derivative rights to property. For instance, shareholders



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1 don't own the assets in a corporation, they only have the right
2 to vote. They do have the right to the assets ultimately, if
3 there's a liquidation or if there's a distribution of those
assets, as does a tribal member.

4 (NOVEMBER 14, 1984)

(OVERLAP TAPE, SIDE 1)

5 If a tribe liquidates, there are special federal laws
6 and if a tribe, I suppose -- ever traditionally liquidated, they
7 might also have a right to a portion of those assets, but it
8 would have to be under tribal law, otherwise they do hold a
9 derivative title. They -- the tribe is the one who has the
10 property and the individual members are able to enjoy in the
11 distributions of that property and have certain rights to use it
12 if the tribe allows. So there are certain corporate aspects of
13 the two concepts that are similar so that the idea of communal
14 property and the private property as expressed in corporations
law -- there are some similarities. So, it may be a very
appropriate vehicle to use. At this point I don't say...

15 (NOVEMBER 14, 1984)

(TAPE 1, SIDE B)

16 ...yes or no. The focus of the discussion now and to
17 continue, is to try to look at what it is -- where we came from,
18 and why it is we need a special period of time to consider, where
19 it is that we're going. And when we do decide where it is that
20 we're going, what kind of components do you look at to make a
21 decision on what it is that you want to do. If I have a concern
22 right now and I like the effort that the AFN is making and the
23 Natives as a whole are making in the resolutions. What my
24 concern is, is that in this move to try to determine our own
25 destinies, that we reduce the scope of our options and don't
consider what it is and why it is that we want something to
change. It's very easy to look at the end results and hire
attorneys like myself to go ahead and work on fancy little



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1 proposals for solutions, but in order to get there you've got to
2 try to consider what it is, what are the components of your
3 decision. Yes we... I was on a corporate board myself. I advise
4 many corporations, so I know the technical problems you have to
5 live with day to day. But I think that you're not going to get
6 real firm satisfactory long-term solutions unless you do look at
7 some of these other issues that aren't considered in day to day
8 corporate management.

9 What it is that causes a conflict in me, and you, the
10 other Native shareholder: I own private property, but then again
11 I'm a tribal member. My tribe doesn't happen to own property
12 right now. A corporation does. I now have the right, ~~and~~
13 derivatively, to determine what happens with that property. I've
14 got conflict in myself, that there is this appreciation of
15 private property rights. I get a dividend every year; there's
16 other shareholders who don't. So I mean, I'm even enticed more
17 than others are. I happen to belong to a fairly successful
18 regional corporation, and a village at that. So, there is that
19 side. But what about the other side of me that says that I want
20 to share. That I know that perhaps I didn't live under a -- well
21 no, I actually did. But I didn't live for a long period of time
22 under a tribal government where those kinds of restrictions are
23 -- and that kind of style of life, where you do not have the
24 right to alienate the property; that, rather, there is a sense of
25 sharing. There is a sense of being able to use, but the idea of
actually owning yourself and taking it away isn't there. A
tribal member can leave, but he doesn't replace himself with
someone else. A shareholder in a corporation leaves; that alone
wouldn't be bad. What happens though is that he replaces himself
with someone else and the corporate tribe has no -- at this point
-- doesn't have the ability to determine who that someone else
is. Under a communal land ownership system, you don't replace
yourself. You don't diminish the interest in the property that



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1 the tribe has. You don't diminish the control over that
2 property. That, I'm trying to express is really a core concern.
3 The -- ideological side to 1991. It's an -- I want to tie it in
4 a little bit more with the resolutions. The resolutions right
5 now, they do provide one provision for the villages, to be able
6 to look towards. A different entity essentially, to put it into
7 a membership corporation, or some kind of a communal holding, is
8 what the result is most of the time. For the most part, the
9 other provisions look towards keeping a corporate form, and
10 having various levels of restriction on the alienability of stock
11 or the various levels of being able to keep control over the
12 corporation through accepted means that are even in the state
13 laws right now, although in some situations, particularly with
14 regard to derivative rights -- I mean to say the dissenting
15 rights -- that there is the need to get some authority to
16 eliminate those. I mean not all states have dissenting rights.
17 It's a statutory provision in some -- in most situations. What I
18 see happening though, and perhaps it -- you see it differently.
19 I wonder here. That there's a tendency to polarize the
20 solutions. That is, to put them all into one category or the
21 other. Sure, if you want communal land holdings, fine, go form a
22 tribe. Incorporate a non-profit, get a trust together, do
23 something or the opposite side is. Keep with a corporation, keep
24 with individual property rights, and live with it as it is, with
25 perhaps some variations.

Now there's still conflict there. There's still this
need to maintain control, perhaps not for these kind of
ideological reasons, but maybe there are other reasons also for
wanting to remain in control of a corporation that aren't
inconsistent with private property rights. People simply want to
keep in control. My point is, that that isn't really the stance
of most Natives, I don't think. Whether they are in a village,
in a very tribal area, a very rural setting, versus being in the



1 middle of a city. Even urban people, or even those people out
2 there share one or the other of these interests. They have these
3 feelings -- these inherent feelings of this communal nature. And
4 then again, there's also the familiarity with private property
5 rights. We have both of them in us and yet the decisions and the
6 choices that we have, ask us to choose one or the other. I don't
7 see enough options that look towards a melding or finding an
8 accommodation of the two, and this is where I get into my point
9 that I think that a long term solution that's satisfactory, will
10 look at those combinations of interests that we have inside of
11 us, and try to find a way of expression in law, that allows for
12 them. I don't know if that's going to come about. I didn't come
13 in talking about the resolutions, or these particular proposals.
14 I mean an attorney typically, wants to do that because he gets
15 paid for working on them later. I may be unfair to you because
16 what I'm asking you to do may cost you more money, because you
17 are going to have to look deeper. And I think that, if you don't
18 find something that's satisfactory that matches those inner
19 feelings that we have, that you're going to have dissatisfaction,
20 personally and inside of people. They're not going to like
21 living with what they have.

22 So, that's really the substance of what I have to say,
23 and what the substance of what the paper is. There's more
24 technical points on what are the aspects of private property?
25 What are the aspects of tribal land holdings? Accommodation has
been practiced by the Natives throughout this period of land
claims. It started with the task force where we had to find what
other people could live with, to allow us to get a land claims.
I think that we are now going to have to look at accommodation
among Natives themselves to find out what it is that each one of
us is going to be able to live with in a solution to 1991, and
that it's not only -- and that it shouldn't only be focused on,
what are the nice solutions that are available to us? The nice



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1 components that we can talk about that fit in and expect, just
2 each one of us to make a personal decision on what's there. If
3 you don't look at what's there, you're going to limit the choices
4 that are available to us. You're going to eliminate this idea of
5 destiny. You're going to be forcing things down people's throats
6 that don't fit what's inside of them. So, does
7 self-determination really in its pure sense, this idea that
8 people decide on their own, whether individually or in groups,
9 does it have some application? Can it act as a philosophy to
10 guide us that goes beyond simply what our balance sheet says? Is
11 there something that we can find that will help us in making
12 these decisions? Tom.

13 MR. BERGER: Well, thanks Bart.
14 That was a very thoughtful introduction to the subject. And I
15 think we might spend a little more time discussing generally some
16 of the questions that Bart has raised. And if I may ask Monroe
17 Price, perhaps, to go next. And you might offer some of your
18 reflections on it, as an historian and lawyer with wide knowledge
19 of what measures Congress is taking in the Lower 48 prior to
20 ANCSA. And anyway, perhaps we can move to you then.

21 MR. PRICE: Thank you. I thought
22 Bart's paper was very thought-provoking and raises some very
23 important questions. I'd like to say first -- and this is
24 something that we'll turn to tomorrow -- the resolutions of the
25 AFN may provide the opportunity for lots of options. I think one
of the real questions that has to be probed, is how many options
can be built within the context that have been -- that has been
set forth by the AFN resolutions and to what extent will those
options be sensitive to the competing values that you described?

Let me say a word first about self-determination.
Seems to me that there are major steps in self-determination and
then there is implementation of those steps to see how they work
out. One could ask oneself whether the 1971 Act was an act of



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1 self-determination by Alaska Natives. That is to say--did Alaska
2 Natives have an opportunity? Moving aside for a moment of how
3 they expressed it, how they communally decided the question, was
4 there some consensus among Alaska Natives in 1971 that, "our act
5 of self-determination is to seek from Congress the kind of
6 structure which Congress imposed." You could then criticize the
7 Act and say, "it doesn't provide enough decision-making, it
8 doesn't -- it leans more to the corporate side, it's not
9 self-determination in an abstract, Platonic sense. But, it may
10 be self-determination in the act of a community saying, "this is
11 what we want." It's just like saying, "the Constitution of the
12 United States is imperfect. It doesn't provide enough democracy,
13 there's not enough one man -- one vote in the United States
14 Senate." But it was an act of self-determination that said "this
15 is our option for the political system and the structure that we
16 wish to have." So there are two different kinds of
17 self-determination. Questions 1 is: When a group decides, "this
18 is what we want," whatever the content of that, is that
19 self-determination? As opposed to taking a look at what it is
20 they end up with, and say, "does that meet some other range of
21 expectations proper or improper?" So here we have the 1971 Act,
22 and one can ask quite legitimately, "was there enough of a
23 consensus? Was there enough consultation? Was it a legitimate
24 act of self-determination itself?" And there may be differing
25 opinions about that but that seems to me to be an integrity
question; that is to say, if there was--if this was something
that was genuinely agreed upon in some "not-vote" plebiscite way,
but in some other sense, is that the act of self-determination?
And then the criticism of the Federal legislation takes different
shapes. How do we perfect it? How do we improve it? How do we
modify it? Et cetera. But you would then take the position that
the Native community had somehow done something that was
reflective of their own views, and 1991 may provide another



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1 opportunity. It's sometimes fortunate to have recurring
2 opportunities, organically, to say here is self-determination in
3 action. And the 1991 visitation of this question may be another
4 opportunity to do that.

5 On this self-determination issue, as well, it seems to
6 me that it is true that there could be something which one would
7 call pure self-determination in which there are no external
8 binds, but that's obviously difficult to get if you take the
9 Navajo Tribe: it is subject to some extent to federal
10 legislation, to environmental protection legislation, to state
11 law. And there is a working out of what these relations will be
12 as part of the definition of what makes a tribe, as it were. So,
13 I'm again -- the very makeup of what constitutes
14 self-determination is complex but I think more important is the
15 organic act of a community saying, "here's what we want." It's
16 like the Micronesia negotiations with the United States
17 government, or other entity -- other examples like that.

18 The other thing, I'd like to address a couple of
19 points. One is, what might be called continuity and
20 discontinuity in community structure. One question which I would
21 have, and maybe Rosita Worl or other anthropologists could talk
22 about this, is the extent to which there has been experienced
23 discontinuity between 1971 and the present, over what went
24 before; that is to say, one could develop a model of Alaska
25 Native history in which there were many different kinds of
community organizations that adapted in different ways to
different circumstances, with different senses of property
rights, different senses of the relationship between individuals
in the group, etcetera. That -- 1971 was an occasion for change,
and maybe substantial change, but not necessarily discontinuity.
What makes people apprehensive about 1991 is that it presents the
formidable likelihood of discontinuity as well as change. And
the reason for that would be, that, I suppose the way one looks



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1 at change is, how external forces mold what occurs within a
2 community. Those could be economic changes, like the coming of
3 the settler community from the Lower 48, or from Russia. It can
4 be economic factors like changes in fishing rights, or fishing,
5 or the changes in the quantity of the fishery or the discovery of
6 oil. It also can be structural changes like the 1971 Act itself.
7 But, some of those are more formidable in their impact on a
8 community than others. It may well be that the power to sell
9 stock and the ability of non-Natives to purchase stock, what is
10 supposed to occur in 1991, is a discontinuity and change aspect
11 rather than merely change, so, it's something that needs to be
12 looked at.

13 One of the things that I would suggest is that perhaps
14 there has been less discontinuity in the last twenty years than
15 we might otherwise think about. And I'm not, not sure what the
16 right answer to that is. One certain likelihood, one certainty
17 is that different people emerged as leaders because different
18 skills were necessary in the post-1971 period from the pre-1971
19 period, but that also may happen to a community when there are
20 certain kinds of external changes. In terms of this question of
21 change, however, prior to the 1971 Act, maybe even prior to the
22 1936 amendments to the Indian Reorganization Act, you had what I
23 would call "organic" differentiation among Native communities.
24 That is to say, no one was saying to a Native community, "here's
25 how you can change and here are the limitations on it." It was,
and this may be fictive, but I'll say this, organic, that is to
say, different communities changed in different ways. And they
had different senses of the role of the individual, and property
rights. I'll bet that there were very different senses among
coastal groups and inland groups with respect to property rights
and things like that having to do with something other than
structure, that's outside. In distinction to this organic
differentiation, we now have under the Native Claims Settlement



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1 Act, something which is, I would call, superimposed similarities.
2 That is to say you've got -- everybody's got to march to certain
3 kinds of, to the same drummer in some way. And it may be that
4 that's not necessarily -- that that isn't even necessarily the
5 case under the Act, and it certainly may not be the case under
6 amendments.

7 Let me give a couple of examples, of that. On the
8 question of the status of village corporations, village
9 corporations had the option in 1971 of being either profit
10 corporations or non-profit corporations. All village
11 corporations chose to be profit corporations. For some reason,
12 which has some historic basis, which I don't know -- they -- this
13 similarity was imposed rather than options, although the options
14 were available. At any rate, and there are probably other
15 examples where -- where options and governing structure that
16 could be used even now, but -- so that even with this
17 superimposed similarity, different structures are developing and
18 probably can develop.

19 The third point I would make is that...and this arose
20 in a McDonald's discussion between me and Ralph Johnson this
21 morning, and that is that we discussed structural issues, and not
22 distribution questions, mostly. That is to say, how should
23 tribes be organized, or how should corporations be organized, but
24 not how should wealth be distributed. And one of the things,
25 that I think people are becoming more sensitive to as 1991
approaches, is distribution of wealth as opposed to management
and accumulation of wealth by the entity. Here the Native, the
elders issue arises, the unborn issue arises, the nonregistered
issue arises, dividends, a number of other questions which could
generally be lumped in the question of "okay, here's an Act
that's been passed". The issue, it's true, one issue is
organization and decision-making, but another issue is how is
wealth re-distributed, and how should decisions be made



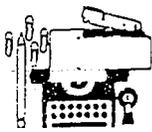
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1 concerning re-distribution of wealth and that may be different
2 from the tribe corporation question. It's -- so -- finally I
3 just thought I'd say that in 1991 as I mentioned, what looks like
4 might occur is more in the way of external forces, I'd say
5 without passage of a statute. And this is what's making people
6 apprehensive, and one of the questions is, "how do you decide the
7 extent to which these external forces should come in?" It's a
8 luxury that we don't always have, and we may not have it now.
9 That is to say, the world is filled with external forces that
10 impinge on community life. This looks like one that is very
11 forceful and about which decisions can be made, and I suppose
12 that a lot of the 1991 exercise is about decision-making
13 concerning that external force. I think I'll stop there, Tom.

14 MR. BERGER: Do you want time in
15 at this point Charlie, or...

16 MR. C. JOHNSON: Yes, I think a
17 couple of points that I think we really need to discuss as we
18 approach 1991. In looking back at the Act, we really see that
19 the imposition of corporations on Native people, I think,
20 individualizes our expectations rather than the communal, and
21 this is part of the thing Bart was talking about, and that the
22 imposition of the American ideal, I think, of individual rights
23 over communal rights, you know really is, or could be a major
24 block in our efforts of changing for 1991. And I, I really
25 think, and that we must do something about that particular...,
right that we have expectations about, that the, the stock
rights, or the stockholder rights, as they're now stated in, in
corporations, gives us as Native people, some expectations of
individual economic benefits that perhaps were absent in a
communal traditional communal setting, and that expectation of
individual betterment, I think we must deal with that in some way
in reverting back if it's our desire to revert back to some more
traditional communal -- setting whether it's a tribe or whatever.



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1 And that we must address that particular question, whether it's
2 in federal legislation or state legislation, that our
3 expectations and our reversion back to a communal feeling of
4 participation in a communal body if we're going to fall back on
5 that, and utilize that deep feeling -- I think is what we might
6 call it -- or whatever, of membership in a Native community, then
7 the corporate structure and the rights that it gives us must be
8 dealt with, and that's really, really important. I think in
9 reassessing or looking back on what has happened with the Alaska
10 Native corporations and the thing that Monroe mentioned about the
11 needs for different skills, if we look back, I think the
12 leadership of the corporations has been developed and those that
13 were leaders were leaders because of political skills rather than
14 other skills that you might find in a corporation; and the result
15 of that is, you see with corporations not performing as well
16 perhaps because the feeling of the leadership that they're a
17 political body, rather than a corporate body, I think caused us
18 -- those, you know, caused problems within the corporations. And
19 I think now that we're, we're reaching a different level of skill
20 or choosing of leadership, other than for political skills that
21 we did at first. Now, in looking toward 1991, I really think
22 that we need to look at the Land Claims Act and ask us, "did the
23 Land Claims Act afford us the opportunity to achieve what we want
24 to achieve", irregardless of how we phrase it or what we come up
25 with. And the answer I think is going to be, "yes, it will
afford us that opportunity." And if the Land Claims Act can be
graded, I think in the end, on that, on whether or not it really
did give us the opportunity towards self-determination then we
might view it, I think, in that light. The problems that we have
been looking at lately seem to emphasize what's wrong with the
Land Claims Act. And I think if we look at it in a different
light, that it does afford us and it will afford us the
opportunity towards achieving the self-determination that we so



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1 longingly look for, then we're going to look at the Act I think
2 in a different light.

3 MR. BERGER: Thanks, Charlie.
4 Bart, did anything that Monroe or Charlie said prompt anything
5 you want to respond to or...

6 MR. GARBER: Yes, in part; that
7 is, my idea of identifying what we have inside of us to find out
8 where we go, doesn't speak to either side. I'd think we'd could
9 see that all of us have both. And the point that Charlie made is
10 well taken: that we have created expectations of individual gain
11 out of ANCSA. And that existed before, I mean it was part of
12 what motivated us to get, to move towards a Claims Settlement
13 Act, and I've stated in the -- as far as the task force, that
14 Natives probably got really close to what they went looking for.
15 So, what Monroe said -- that is, they look for something, they
16 manage to get it and it came within the restrictions of what
17 everyone usually has to live with in society and that is that
18 there is a Congress, there is a state law, there is a federal
19 law, there are limitations in what people can do, so that you
20 can't get a pure self-determination. There's one other thing,
21 and that is that I'd like, it's not really my idea, but in
22 reading through the volumes of things that Tom has sent me, I saw
23 a number of interesting comments -- and Borbridge makes this one
24 point about 1991 as an opportunity to re-evaluate and perhaps to
25 give some leverage to those who haven't been heard before.
Because it does, 1991 does signal a time when there may be, may
come a tumultuous change that impacts both sides; those of... the
issue if you look at it as a full spectrum, and all of us being
in between, of how it will affect us individually, how it will
affect us communally. Look at it as a means of getting
corporations that better reflect what we each have, whether if
you happen to be in an area where you want that to be a pure,
pure business machine that's fine. But use that time to get



1 changes that better, that make that entity whatever it is, work
2 better for you. So that it is an opportunity -- and that it's
3 good that you do have 1991 -- on one side that it is good, that
4 there is time to reconsider. If we didn't have that, you may
5 have had simply entrenched power that went on forever, wherever
it happened to lay.

6 MR. BERGER: Would anyone over
7 there like to, to say something, Glen Fredricks, Marlene Johnson,
...

8 MR. FREDRICKS: Monroe Price,
9 Monroe said about why we had to... one was non-competent; I
10 incorporated a lot of villages in the Bethel region, when
11 incorporations and so forth and explaining what... and
12 surprisingly the attorney that we had didn't explain to us what
13 the differences were, and I kind of regret that we didn't look
14 more into that non-profit status, because you can always take out
15 a piece of land if you were to make a business deal. I think in
16 my mind from the profit -- non-profit corporation and make that a
17 business enterprise. And what Charlie said -- I believe we're on
the right track now. Used to be that we view our Native
officials in political -- more so in political light, than the
business we're -- I think reverting now to the business, and left
politics maybe, to the non-profits -- so forth.

18 MR. PRICE: I'd like to ask Glen,
19 Mr. Fredericks, whether you think some of the village
20 corporations should have the option to -- that they had in 1971,
21 but exercise it the other way; that is to say, would one, one
22 possible solution to some villages be the -- to go from the
profit corporation mode to the nonprofit corporation mode?

23 MR. FREDRICKS: Yeah, I think, I
24 think, there should be, and I think there is a way and maybe
25 little later on I'll explain what we're doing; we're one of the
ten villages that merged in the Kuskokwim area into one



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1 corporation, put all our assets in land into one corporation.
2 And I believe there is a way under State corporate laws,
3 different corporations, co-ops, and so forth, I think that should
4 be looked at. We are, I know, at an advantage looking at federal
5 side, but I think we should be looking on the state level, and
6 maybe some of these corporations, and associations and so forth,
7 can be changed for the better of the Native community.

6 MR. BERGER: Yeah, Bart Garber.

7 MR. GARBER: I don't want to
8 abuse the position I managed to get here, but -- there was one
9 other thing, and I've only heard of it by second hand, because I
10 deal with the question sometimes, and perhaps Glen, you or others
11 who actually were the incorporators at that time... there had
12 been some concern that it may not have been an absolute free
13 choice that was available. I've heard, that at times, that there
14 were some concerns with the distributions that were required
15 under ANCSA that some attorneys may have advised that a
16 non-profit wouldn't, didn't have the powers under the state
17 corporate laws to do that, and thus that the non-profit was a
18 no-option, and that in fact, that wasn't an option, because they
19 couldn't give out money to their share... their members. Now
20 that may have been a wrong position to take because you may have
21 been able to say that... that the federal law that said it could
22 happen to displace whatever the state said, but that may not have
23 been the opinion that was given to a client. So I don't know.
24 If some have some direct comment on that, I'd like to hear it.

21 MR. FREDERICKS: I believe you're
22 right, because we were told that our, that we couldn't distribute
23 like dividends, under the program, I guess, you can't, not being
24 an attorney, I don't know. But that was what we were told, that
25 at that time, that we couldn't distribute, and everybody figure
we're going to, as Natives, we're going to get lot of money, and
all the land we figure we're going to get, we've got to have some



1 entity distribute that stuff, you know, and I think there was a
2 mistake, I really believe it now, we should have gone non-profit.

3 MR CASE: This has come up
4 before. The State... and I am an attorney, but I don't know if I
5 have the answer... but the State in 1972 did amend the non-profit
6 corporate code, with just a short paragraph to specifically
7 permit corporations to organize as non-profit, as ANCSA
8 corporations, or as village corporations to organize as
9 non-profits. Now this does not specify -- and I don't recall the
10 exact cite right now, much less the language, it does not quite
11 specify -- that these corporations will be able to make
12 distributions, but you could probably argue pretty cogently that
13 they do, since the claims act requires the distributions to be
14 made.

15 MR. PRICE: Maybe that is
16 an example of individual right, maybe it isn't a legal
17 prohibition, but an example of individual rights versus
18 collective rights. One could have said, maybe, that if you
19 organize as non-profit, you could give out, you could provide
20 benefits to people who were beneficiaries of the nonprofit, who
21 would be broader than the shareholders, that one of the benefits
22 of the nonprofit was that it could benefit people unborn, it
23 could give dissimilar benefits to individuals, et cetera. So I
24 guess if you ask that group called "shareholders of a village
25 corporation," did they want a choice in which a larger group
people could be benefited, and benefits could be dissimilar among
beneficiaries, or did they want to be the sole beneficiaries or
did they want it to be automatic, it might be that they might
automatically chose the profit-making route, or if it is
explained that way, that might of been what occurred.

MR CASE: Right, I think, nobody
really knows what happened...

MR. PRICE: Right.



1 MR. CASE: ...but, I guess, you
2 just said, Glen, was -- you were advised that you could not make
3 the distributions -- the judgments the fund distributions of the
Native Fund.

4 MR. PRICE: That may be true,
5 yeah.

6 MR. CASE: If that was correct
7 advice, well fine. If it wasn't correct advice, then of course
that means that option you just mentioned was really eliminated.

8 MR. PRICE: Right.

9 MR. BERGER: Did you want to say
something, Drew?

10 MR. HAGEMAN: This is in part a
11 response, I guess, to the issues that Bart has raised, and I
12 think that some of the issues that are built into our discussion
13 through these days. I'd like to just raise the issue of the
14 definition of control that has been mentioned a few times, and I
15 think is underlying some the discussion today. I think when we
16 talk of, we've talked about control today, we've focused on kind
17 of the organizational or structural basis of control, we've
18 looked at structural forms of control, we've talked about
19 alternatives to the corporate form, tribal form. The issue I
20 guess I'd like to raise is that there is another aspect of
21 control that needs to be addressed and it is probably the
22 individual-based form of control. Issues of expertise, and skills
23 and abilities.

24 On the one hand, we can have some agreement or develop
25 agreement or develop a consensus on what kinds of forms or
structure ought to be put in place to remedy some of the problem
that have been identified. I, -- it's one thing, however, to
reach some kind of an illogical agreement. It's another thing to
make it happen. I guess I'm concerned as a professor in a school
of management, I'm concerned about the skills and capacities,



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1 particularly of Native people, to make these organizational
2 forms, regardless of what form we are talking about, happen and
3 work effectively. I guess there is a corollary to that, another
4 piece to it. On the one hand, I'm understanding that the
5 for-profit Native corporations are doing a better job, that
6 Native managers are developing the kind of skills that have been
7 talked about, that permit effectiveness from a corporate
8 prospective to go forward. My concern is this: I suppose we'll
9 have some opportunities to talk about it in greater detail later,
10 but that very success in being successful with the profit form
11 may in fact be pulling the pins out from alternative forms. We
12 may be diverting, first of all, some of our best Native talent to
13 the for-profit corporations. We may be taking those and
14 continuing to take those away from village and non-profit
15 corporations making them less viable. On the other hand, as we
16 look at the kinds of skills that we're providing for those who
17 run the for-profit corporations, those skills are not necessarily
18 those skills that are consistent or congruent with the some of
19 the values that we've talked about here today. The communal
20 approach... we've talked going back to the communal approach. We
21 maybe talked about going back, but we are not putting the skills
22 in the hands of Native managers, and Native people, to make that
23 a reality. What we are rewarding in our system now is a
24 western-style structure. What we are rewarding in terms of
25 success among Native leaders is a western form and I recognize
that there are many, many examples where Native for-profit
corporations have been able to deal successfully...

(Indiscernible portion of tape)

MR. BERGER: Closely resembling
ANCSA, that is no settlement that set up shareholders'
corporations. The Menominees' settlement set up shareholders'
corporations, but the period of... the period when the shares



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1 were not transferable was postponed and eventually they were
2 restored, so that does not constitute a real precedent. But what
3 Congress did was, they said, "you are all shareholders now, and
4 you have a form of private property known as shares in a
5 corporation and you do not, as a tribe, own this land anymore."
6 Let's assume for the sake of argument that the Alaska Native
7 tribes owned all the land, that there were tribes and they owned
8 all the land -- we won't spend time talking about that. They
9 said, "you now have a form of private property like all other
10 investors in America, and here it is" -- and Congress obviously
11 intended that in twenty years time those shares would go in the
12 market, and that people would sell their shares and get money or
13 monies worth and use the money to buy snowmachines or fix up
14 their houses, or buy other shares, buy shares in General Motors
15 -- that Native ancestral lands would after 1991 become part of
16 the...

13 (NOVEMBER 14, 1984)

14 (OVERLAP TAPE, SIDE A)

15 would become mingled with the lands of privately-held lands in
16 Alaska generally, and that there would be nothing distinctive
17 after 1991 about Native corporations; they would be just be
18 corporations with some Native shareholders, some non-Native
19 shareholders, and that was clearly the intention. Now nobody --
20 no other settlement that I'm aware of, either before or since,
21 adopted that particular method of settling the claim. And we're
22 in the situation where as far as I can tell -- and no one else,
23 no one here is disputing it, as far as I can tell -- Native
24 people in Alaska are saying: "well, we don't want that outcome,
25 we don't want nature to take its course, we don't want to see the
land that we hold -- that we have always held in common and that
is now held by corporations -- we don't want to see that land
fall into non-Native hands." That is the theme of what I've been
hearing in the villages: they feel that land, that land, should



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1 be passed on from one generation to the next. Yet, as Charlie
2 Johnson says -- and I thought the way he put it sums up the
3 dilemma Bart adverted to -- this... There is an expectation of
4 individual benefit; people out there are holding shares. Some of
5 them, like Bart, who is a shareholder of CIRI and Tyonek, I
6 guess, he's been getting dividends, I don't know how much, but a
7 lot of those places people have not been getting dividends, and
8 like human beings everywhere, they can't help thinking that maybe
9 in 1991 these shares will be worth something and "I will finally
10 get something out of this claim." Because the idea of cash has
11 always been regarded as part of this claim and some people who
12 didn't get dividends from their regional corporation or their
13 village corporation... or I think quite

(NOVEMBER 14, 1984)

(TAPE 2, SIDE A)

14 legitimately one side of their... with one-half of their minds,
15 thinking "it would be nice to get some money out of this thing,
16 because I was supposed to get some money, and I never did, and
17 whether it is Congress that's responsible or the guys running the
18 corporations who didn't earn the profits that they were supposed
19 to so they didn't pay the dividends and I didn't get any money."
20 There's that feeling and, yet, I think the dominant feeling even
21 among those people who feel that sense of grievance, that "I
22 should have got something out of this and maybe in 1991 I
23 will..." if you say to them -- and this is the discussion that
24 has gone on at the village hearings that I have held, and that
25 other Native people have said, "but if you sell your shares then
outsiders will come in, they'll own this land and it won't be
ours anymore, surely you wouldn't sell your shares then," they
say okay, "I wouldn't sell my shares, not when you put it that
way." And yet again, and again people say, "I don't think I
should sell my shares, I think it will be a bad thing if we all
sold and yet, faced with the temptation, I might do that." And



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1 of course, all of us in life can agree on some abstract principle
2 that we shouldn't do such and such and yet in certain
3 circumstances we might find that as individuals we would do that
4 very thing. And so Congress has set up this dilemma and it is
5 something that nobody else has really faced in quite this form.
6 I've got all these experts here, the attorneys, maybe I'm wrong
7 about this, but I don't think anybody ever had to wrestle with
8 anything quite like this, and..

9 MR. PRICE: I'd like to just
10 address it in one way, although even though I'm an attorney, I'm
11 not adequate to deal with this question, and that is the extent
12 to which it is the correct view you have expressed as to what
13 Congress had in mind after 1991 -- what would happen as the
14 nature of the corporations evolve. I think that there are a lot
15 of corporations in American society that are basically either
16 closely held or family nature corporations or have other
17 qualities even though they may have aspects of wide ownership,
18 even public ownership, where resolutions have had to be developed
19 that preserve cultural integrity, and yet allow some economic
20 investment from the outside. Let me just point to a couple. One
21 is the Getty family and the planning of its assets, and the
22 culmination in the Getty Foundation and the Getty Museum. Right
23 now, recently the Getty Foundation sold the stock that it owned
24 in the Getty Corporation, but it basically controlled the Getty
25 Corporation -- the assets of the Getty Corporation -- but it used
its control to further what it perceived to be the goals of
Getty, individually and culturally, in terms of a small piece of
what they wanted to do. This is true ...

MR. BERGER: Excuse me, what were
the cultural goals of the Gettys? I just can't help ...

MR. PRICE: Getty himself had
certain personal and cultural aggrandizing goals which he,
basically, in some totally monomaniacal way, did achieve. The



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1 thing that's interesting to me, and the only part that's
2 interesting for our purposes is that, the Getty was set up to
3 involve public investors, be listed on the New York Stock
4 exchange, and yet repose a considerable amount of control in the
5 Getty trust. When the merger took place between Getty and
6 whatever oil company ultimately acquired the Getty corporation,
7 it was the Getty Foundation that was the critical point of
8 decision as to what that future should be. The Getty Foundation
9 was a non-profit foundation that was dedicated to a purpose other
10 than maximizing the value of the Getty corporation assets. One
11 can think of this with respect to the Rockefellers, with respect
12 to other family entities in this country, who have tried to work
13 out a relationship between wealth maximization and control of
14 asset, bringing in outside investors, and a variety of other
15 kinds of things.

16 I guess the last tidbit along these lines that I want
17 to mention is that the Hershey Corporation, for example, the
18 stock... control of stock in Hershey Corporation or control
19 of...has...a large portion of its stock is held by a school in
20 Hershey, Pennsylvania, which is the repository of some goals
21 other than those of the Board of Directors of the profit-making
22 entity.

23 All I'm saying, I suppose is this: that in thinking
24 through what a corporation can be, I think it's wrong to have a
25 simple and narrow idea of what that corporation can be and I'm
worried from your expressing it, that's basically where this
entity is going. When one thinks of the corporate alternative,
is there a way of reposing control -- of having preferred stock
and common stock, of having stock in voting trusts, in creating
entities that met Bart's goals that have maintained control of
the corporation in ways that are moderately consistent with 1991?
That is to say, this would involve some changes, or may not
involve any changes. I cannot speak to that at this point, but



1 address those questions without making it this polarized
2 distinction because I think one of the dangers is -- and I think
3 Bart was right -- and I hope the Commission hears him on this,
4 and that is: it's not necessary to polarize, to see these as all
5 or nothing choices. As you've stated, it seemed to me, you were
6 saying there do seem to be these two views and the one that is
7 adopted in 1971 is so atypical and so far to one side, that
8 itself is polarizing. That may not be the case. That is to say,
9 it may have its own adaptability the same way the tribal form
10 has had some adaptability so that you can find a structure or the
11 opportunity for a structure that meets the various goals. It
12 seems to me that that's true, which I'm reserving judgement on as
13 well. The real -- the important question is, how do you allow
14 people to make the choices? How do you provide that they are
15 adequately informed, that they see the alternatives, etc.. So,
16 that seems to me to be a very important function of this
17 Commission and it wouldn't be well served by saying that the
18 corporate structure leads only in one direction if it doesn't.
19 It may, but I myself am not sure. The fact that it exists and
20 that, in its toughest outcome, can lead to external control. It
21 may mean that it should be abolished as an option, but my view is
22 that it can be adapted.

MR. BERGER: Elizabeth Johnston.

MS. JOHNSTON: Certainly, Monroe,
I would agree with you that the corporate forum is very
adaptable, but like Drew, I'm somewhat concerned about the depth
of the Native leadership to do all of this; and by that I do not
mean that there are not Native leaders with a full complement of
all the skills needed in our society, both the financial and the
political. I mean the numbers of the Native leaders when
compared with the numbers of entities we're dealing with. I work
for a regional corporation, and I think that at the regional
corporation level, there are a tremendous amount of skills and a



1 tremendous range. But it does concern me and maybe it is the
2 same way as Drew is seeing it, that we pulled from many of the
3 village corporations some of the leadership that they could have
4 been using and as in-house, we've tried to examine some of the
5 corporate alternatives, particularly looking at some of the
6 traditional anti-takeover devices, some of them that might be
7 successful or effective in the usual corporate world, and then I
8 try with my mind to apply what would happen with a village
9 corporation trying to implement them, and I give up, which is one
10 of the reasons I would be very supportive of a strong restrictive
11 stock option because I believe that the anti-takeover devices are
12 a backup to that, not a substitution for it. One of the reasons
13 I believe that is not only because of what you see on Wall Street
14 and whether anti-takeover devices are generally effective but
15 also this whole level of sophistication -- tremendous
16 sophistication -- that I think Bristol Bay would be hard pressed
17 itself to implement. And when you think of the village
18 corporation level doing it -- it just boggles my mind at trying.
19 So I think there is a problem with how many skilled Native
20 leaders you can expect a population, which initially started at
21 70,000 but now has increased, but to be producing for something
22 that involves over 200 entities. I do think that remains a
23 problem.

18 MR. PRICE: I'd like to ask Bart
19 a question and this goes to Elizabeth's point. In the initial
20 formulation of the Settlement Act, there was to be a social and
21 development corporation of a statewide nature that was ultimately
22 not included. I always thought that might have been a mistake.
23 It may have been a bargain form question where there would be
24 some entity that had greater responsibility for relating to
25 village corporations. It is a different model. It really goes
back to the for-profit/not-for-profit question. But if you had
a model of strong regional corporations that were profit oriented



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1 -- then you had a number of village corporations that were
2 non-profit with a central entity that had resources, some money,
3 some power, some ability to hire expertise, etc. -- that might
4 have provided better results and perhaps that could be considered
5 in the 1991 planning. So if this is a question of providing
6 assistance to the village corporations, maybe you would like to
7 comment on the history of that which I think has not been very
8 good.

9 MR. GARBER: So, you want to know
10 a little bit about what were the components of well -- at the end
11 result is, is there any possibility of getting an overall kind of
12 assistance to villages? First of all in regards to the statewide
13 social services group, there are two issues banged into one
14 little thing there. There were a number of different reasons for
15 having a statewide corporation which varied from the federal
16 government would ultimately end its responsibility for giving
17 social services and that the intent was to use settlement funds
18 to provide social services. That was one reason for rejection.
19 The regional corporations and the voluntary associations who were
20 going in didn't think it was feasible because at one point this
21 wouldn't simply be a social services entity that assisted people,
22 but other statewide corporations had for their purpose a managing
23 -- the finances -- so, I mean actually being the business entity
24 -- the various voluntary associations didn't like the idea of
25 centralized power where they had already set up a statewide
regional kind of power system. So, the assistance aspect for
villages was not really centered at that point and the only other
rationale that there was, at one point, was that this corporation
may have ultimately become AFN and that way it would have been
able to have been funded by settlement funds and been a powerful
political power. The state opposed that. So there are various
reasons why a large statewide corporation was defeated. Now,
that doesn't say there haven't been efforts to assist village



1 corporations. ANF (the Alaska Native Foundation) for the longest
2 time and to this day still has that as one of its purposes.
3 Groups like Glen's, by merging, have been able to provide their
4 own kind of centralized leadership so that they reduce management
5 expenses and distribute what skills they have over a larger area.
6 That's done in other areas also so there are many of these I
7 guess, most of them are non-profit like IVA, who have centralized
8 management that you can contract for -- so it's being done on
9 their own. There is a possibility for that, but even so, they
10 don't have independent sources of money and they're still going
11 to have to charge for the services, so the volume of activity
12 that has to occur to protect yourself under these kind of
13 shark-repellant things and the kind of political movement that
14 has to come about to implement them is just enormous. That's one
15 thing that sways against this idea of keeping the individual
16 being able to determine what happens versus are there some
17 structural problems as far as the laws go that make it just too
18 big a problem to try to have an effective -- a real plebiscite --
19 where people really have an intelligent choice to make and are
20 they capable of making it? That's a problem because of just the
21 volume of things that have to be done to protect yourself under
22 the kind of peer-corporate system that we have. Now, Tom, there
23 is a number of things that I'm kind of holding back that have to
24 do with other things. I'd -- to make -- I mean we've got three
25 days, so I don't have to spill all my beans today.

MR. BERGER: Okay, Well I...

MR. GARBER: So, I'll have
something to talk about tomorrow.

MR. BERGER: ...Claude Dementieff
and Ralph Johnson will end up.

MR. DEMENTIEFF: With all the
discussion, I also have a number of questions keep popping up and
then it goes on to another topic and it's hard to keep following



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1 it here, so I'd like to back up just a little bit to the concept
2 of the settlement in 1991 itself. It's a special relationship, I
3 think, that the Native people have with the federal government.
4 The Settlement Act, in a word, has been defined in terms of the
5 purpose and the intent, but Congress never really defined
6 settlement -- what that word means right there. Is the
7 settlement over or is this a continually agreeable situation that
8 goes on throughout the life of the relationship which means
9 forever and ever with the Native people and the federal
10 government? I appreciate the analogy you made with Getty and
11 Hershey on how corporate matters work, but I don't, to my
12 recollection, I don't recall them having any settlement with the
13 federal government, which makes Native people much more different
14 than the Getty family. What we should probably do before 1991 is
15 ask Congress what is their definition of the settlement? Is the
16 1991 concept a periodic review that is healthy for all Native
17 corporations to go through eventually to continue the refinement
18 of the settlement? Because I think, most Native people do not
19 believe that the settlement is final at this time, but it's a
20 continuous process because of the continuing relationship the
21 Native people must keep with the federal government.

17 MR. BERGER: Ralph Johnson.

18 MR. R. JOHNSON: I might comment
19 on a couple of things about -- well first, I thought it was very
20 interesting and very thoughtful of Bart Garber to discuss the
21 impact of the 100-year time period of grace rather than the
22 20-year period. That's a very interesting elucidation of that
23 issue. I'd like though, to comment on Monroe Price's remarks
24 about corporate flexibility and I have no doubt but what the
25 corporate structure, has that flexibility and could be used for
the whole range of purposes that might be available. I think
there are some other facets though, one of which is mentioned by
Elizabeth Johnston and that is the skills that are available to



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1 small communities, whether Native or non-Native of a few hundred
2 or a few thousand people. There just isn't going to be the kind
3 of skill ongoing all the time to understand and implement the
4 wide range of corporate possibilities. There's another
5 fundamental issue that has been mentioned, and that is the
6 question of permanence. Corporate structures come and they go.
7 They change. You get into that thicket and if you're skilled and
8 if you are a J. Paul Getty or a nation within a nation as Getty
9 is or as the Rockefellers are, then you have the continuing
10 power, political and economic power, to do what you want to do
11 and to structure the corporate form to accomplish those social,
12 cultural and political goals; but that's a very different thing,
13 it seems to me, then corporations of the level that we would be
14 talking about in Alaska.

15 I think also, there is a sense among, at least -- if I
16 can identify what Vine Deloria says in his last book -- the
17 traditionalist view, which is one strong view in Alaska, and that
18 is, there should be something more permanent than a corporate
19 form. Then the question may be, who should decide what the
20 future is? Should it be the stockholders or should it be
21 Congress? Tom Berger has alluded to this before but, the
22 question may be that if Congress decides that, for example, at
23 the extreme end by putting land into a trust status, then it is
24 not in the corporate thicket, it is not as flexible, it loses the
25 aspect of flexibility, but it does acquire an element of
permanence. It doesn't mean it's totally permanent, because
Congress can also change its mind at some future time, but there
is a degree of permanence that is probably not there with the
corporate form.

MR. BERGER: Rosita, Rosita Worl.

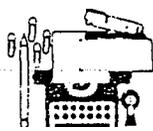
MS. WORL: Yes, I think there've
been a number of different issues that we could spend the next
three days discussing but I'd like to just bring it back to, at



1 least from my perspective, I'd like to know if what I see as the
2 basic elements which characterize or which are prominent in
3 Alaska Native societies which maintain and support a communal
4 state or a tribe. I think we've based most of our discussion on
5 land -- land and then also resources. But also, supporting this
6 communal state or tribe, we also have ideologies, ideologies and
7 values which promote an integration or unification of the group
8 and some of those kind of values are sharing of resources,
9 re-distribution of the resources among the group to take care of
10 all of the group -- the elderly, the young children -- we have in
11 place, in Alaska, those kind of cultural values that, you know,
12 integrate the group. In addition to that, we also have
13 structural organizations, and structural organizations centered
14 around kinship systems or extended families. In the northern
15 areas, it's a -- the bilateral extended family; in southeast it's
16 clans. Those are three prominent elements that lead to this
17 tribal state.

14 I have always labeled ANCSA as a cultural encounter. A
15 cultural encounter that brought the two conflicting ideological
16 systems into contact. To answer a little -- a little, just
17 briefly, Monroe's questions about the discontinuity and
18 continuity. In my opinion right at this particular point in
19 time, we haven't had -- we haven't had -- felt the full impact of
20 corporations in the villages, and I think we're -- because of the
21 delays in settlement, you know, how people -- the corporations
22 not getting their land in a timely fashion or until recently, I
23 don't think we've really felt the impact.

21 From my perspective and also reviewing most of the
22 anthropological literature that's been written on Alaska Natives,
23 I think the thing that is really remarkable is the persistence of
24 Alaska Native groups. In fact, I think there was a whole group
25 of anthropologists who, within the last decade, have had to try
to break down the myth that Alaska Natives were totally



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1 assimilated and have had to demonstrate to policy makers that
2 indeed Alaska Natives were utilizing the land in traditional
3 forms, and I think that's where we had to deal with -- where
4 subsistence became a primary issue and that was, you know, to try
5 to prove to policy makers and the public that Native people are
6 not assimilated, that they were still very much involved in a
7 traditional life-style. In my opinion, the cultural encounter
8 that I see between ANCSA and Native life-styles is yet to occur.
9 I think we're in the process of it, and whether corporations have
10 that kind of flexibility to protect those basic elements that I
11 see at this point in time, I don't know, but at this point in
12 time I do see a viability of persistence of Native cultures.

13 MR. BERGER: Yes, Roland Shanks.

14 MR. SHANKS: Yeah, well I just --
15 I've been listening and people have been coming up with a lot of
16 interesting ideas and I'd like to kind of throw some of my ideas
17 and perceptions into the pot that we're going to boil over in the
18 next three days. I think there's -- there's something that goes
19 even beyond the village corporation, ANCSA problems that -- that
20 really kind of sets the framework that surrounds that problem.
21 In Alaska, I think we're -- we're not only at a turning point as
22 far as whether the village corporations and ANCSA is going to
23 live or a change. I think we're also at a point where we need to
24 look at the entire issue of village Alaska essentially. Is
25 village Alaska going to survive? Or is Alaska going to radically
change into larger urban areas with essentially the villages
being de-populated and ceasing to exist? And I think that that
is -- is really at the heart of some the concerns that we hear
coming out of, particularly the smaller villages, when it comes
to dealing with their corporations. We have villages that are
not only being impacted by the economic corporate structure of
ANCSA, they're also being asked to deal with municipal



1 corporations in terms of forming first or second class cities.
2 They're being asked to deal with the possible formation of
3 boroughs, and all that may mean as far as taxation and
4 establishing a form of government that is -- that falls within
5 the purview of the state government. We're asking them to deal
6 with a changing educational system which is putting schools into
7 their villages and asking people to serve on school boards which
8 is something that's pretty alien out there, and when we start
9 talking about the depth of leadership in villages, we're not
10 talking about just the depths of leadership which has to cover
11 the ANCSA corporation in the village, we're talking about
12 somebody who also has to be the mayor on the city council, who
13 has to run the school board and maybe run the school. And we're
14 talking about trying to establish all of these forms of rather
15 alien structures in villages which, in many cases, have almost no
16 economic structure at all and almost no economic potential at
17 all.

18 A typical small village out in the bush has very few
19 economic opportunities and if somebody is being civic minded
20 enough to sit on the school board and maybe be on the city
21 council and often be on the board of directors of his
22 corporation, that person -- there is just not enough time left to
23 hold down an economic position that allows that person to
24 essentially stay alive and meet the bills. So we have a problem,
25 I see, that we are essentially asking people to fill a role that
leaves them no time for the other roles that they have filled in
the past. I think that when we look at village corporations --
while some village corporations are doing well, there are several
village corporations that I'm sure a lot of us haven't heard from
in a long time. I mean, they seem to be kind of settling into
two classes. There are those that are moving along and there are
those that we just don't hear from anymore. And I think that
most of the regions at least waste -- know of villages within



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1 their regions that it is very hard to get answers back from
2 because you go out there and you'll find most of the cor-
3 respondence in a (indiscernible) box in somebody's house because
4 that's -- he'd just gone down and picked it up. So we have that
5 problem; that is, I'm afraid that we have villages that are
6 withering on the vine and kind of dropping off and some of us I
7 don't think are even noticing.

8 MR. BERGER: What corporations do
9 you mean?

10 MR. SHANKS: Corporations who are
11 technically in default. I mean we've passed one law in this
12 state which reinstated the villages that were involuntarily
13 dissolved and I think it's yet to be decided whether we're going
14 to have to pass a law like that every two years to put villages
15 back into status or not. So I'm very concerned that we're so
16 busy looking at 1991 and what may happen in 1991 that we may not
17 be minding the store now and we may get to 1991 and discover
18 we're already made some significant losses.

19 I think that there were some allusions earlier to the
20 fact that I think corporations -- that corporations are moving
21 into a -- being able to -- better manage themselves -- moving
22 into making essentially leadership decisions based on managerial
23 skills versus political skills, and I think that is true in lots
24 of areas, but I think there are other area where that may not be
25 quite as true. I think the Alaska Native corporation has a
really strange situation because unlike major corporations in the
United States who generally have at least what is a majority
shareholder or several blocks which make up a majority
shareholder, you have an interesting situation in Alaska Native
corporations in that everybody starts even. You have no majority
shareholder. You have no owner and starter of the corporation
who essentially took the corporation public. You have no group
that took the corporation public. You have untold numbers of



1 people coming together, all receiving an equal status in the
2 corporation and oftentimes with very, very radically different
3 ideas of where that corporation should go -- everywhere from the
4 person who has very corporate types of goals to some of the
5 people who have very traditional types of goals. And so what
6 you've built in is a volatility in the ANCSA corporations that I
7 don't think exists in most other corporations. And because of
8 this difference in values that you see represented, the
9 volatility is not in whether this group should manage or whether
10 that group should manage. Often times the volatility is whether
11 it should be management or whether the land should be -- or
12 whether corporations should go in a more traditional path. The
13 difference is not a style of management -- the difference may be
14 a complete different thrust in the corporation. Then you have
15 corporations that essentially go down a very crooked path because
16 under one management they kind of go one direction, and under the
17 next management all of a sudden they are radically going in
18 another direction and there is very little continuity.

19 To speak to the issue that Charlie brought up very
20 early -- and that is individual expectations. I think that there
21 have been a lot of expectations built up in the Native population
22 as to what the Settlement Act is going to provide them and I
23 think that in most parts, it is a failure to reach those
24 expectations that is the source of the unhappiness. I'm not
25 exactly sure who started the rumor in rural Alaska that every
Native shareholder was going to automatically be wealthy and was
going to have a large estate, but that's kind of the word that's
gotten out and because corporations have not been able to reach
that goal, they've been looked down on. I think oftentimes
corporations that are doing very well from kind of an outside
perspective are viewed from inside as not meeting those
expectations and therefore are not doing well. Again, I think
that this whole problem of each person within a corporation



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1 having a different set of values and basing their expectations on
2 those values makes the corporation a very hard animal to deal
3 with because it has to be so broad to try and meet all of those
4 different expectations.

5 We also run into a problem of essentially Anglo-Saxon
6 law when it comes to individual expectations, and that is there's
7 been a lot of talk about the kind of -- "well we are going to
8 transfer this corporation that way," and "we are going to
9 transfer this corporation that way" and all of a sudden you run
10 into individual rights and you end up with the fact that rights
11 cannot be taken without compensation, and are we talking about
12 some kind of inverse combination for people who do not agree and
13 how are those issues going to be dealt with. It is essentially,
14 "Congress can give, but when Congress takes away, all of a sudden
15 Congress has to pay". That's kind of the way the rules have
16 always gone. Those are going to be very difficult hurdles to get
17 over. I don't have enough background and don't pretend to have
18 enough background in corporate law to know all the ins and outs
19 and I sure hope that we can find some flexibility that will deal
20 with some of the problems that we are seeing. I think some of
21 the large family trusts, while they provide interesting ideas,
22 have never had to quite deal with this broad disparity in what
23 their expectations are. I mean, we saw a little bit of that in
24 the Getty take-over and that is that one brother went one way and
25 one brother went the other way and it ended up being a big fight.
But the difference in that was, that they were both fighting as
corporate giants. They were not fighting because they had a
different view of where that corporation should go, they just
merely had a different view of how it should get there. I think
it is very different. And I think that if we looked at some of
these large family corporations... we see corporations where,
yes, they have gone public, and, yes, they do have many
shareholders, but again you have that large block of family

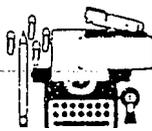


1 stocks that gives direction and continuity to the company and I
2 don't think that we see that in ANCSA corporations because of the
3 fact that the shares were scattered equally over the families.

4 So I guess I don't really have answers, I only have
5 questions and I think hopefully over the next few days we'll be
6 able to address some of these, but I think it's without doubt one
7 of the more interesting and challenging questions that have come
8 along in a long time and the Alaska Natives stand, I think, on
9 the edge of some very difficult decisions and have even a more
10 difficult road to implement those decisions once they have been
11 made.

12 MR. BERGER: Thanks Roland. Gary
13 Anders.

14 MR. ANDERS: So many good points
15 have been made that I find myself nodding in approval with
16 different points of views as they've been presented. I have a
17 direction that I would like to move toward that I think will add
18 some substance to the discussion as we move along. With regard
19 to values -- an interesting paper I read not long ago talked
20 about implicit values and technologies; and if you look at
21 corporations and see them as a form of technology you begin to
22 appreciate the demands that are placed upon corporations by the
23 governments and by the shareholders, that there are relationships
24 that have to be established and within those relationships there
25 are implicit structural arrangements based upon value systems.
Thinking of a analogy that was made by an architect of overpasses
to a fairly affluent community in the east who specifically
designed and situated one that no public bus could pass through
-- only individual cars. And I guess you can either raise the
overpass or come up with a different form of public
transportation. I think that with regard to ANCSA specifically,
the context -- the twenty-year time period, the time at which it
was implemented and the time that we are addressing have to be



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1 taken into consideration... Context -- with regard to national
2 policy with regard to political association within the Congress,
3 with regard to national ideology of the times, and also in terms
4 of the state developments. We are talking about the depletion of
5 oil reserves and what that might bring to bear in terms of the
6 State and I think that's a factor that has to be taken into
7 consideration.

8 What I am hoping to contribute here, is basically an
9 attempt to find what "success" is. I agree with Charlie
10 Johnson's point that Native people are rising to a challenge.
11 You're looking over the right complex legislation that gave rise
12 to all the corporations in the state. It's not clear that there
13 were plans made and contingencies drawn up. As a matter of fact
14 it's very confusing because there is just so many agendas that
15 are being executed. Congress didn't define what success was and
16 they didn't really lay out a very clear strategy for achieving
17 certain kinds of goals. Native corporations and Native leaders
18 have helped to elucidate those goals and gain popular support for
19 them. My question to the panel is, assuming that people will
20 always find reason to disagree with each other in promoting their
21 own self-interest or promoting collective interest choose different
22 courses of action, with regard to the transfer of stock, with
23 regard to the ownership of the corporation with regard to the
24 development policies that the corporation is going to try. What
25 is at this point, given all the information that we have absorbed
in the background of the discussions, what is an acceptable level
of success, I mean what are the kinds of specific objectives that
we can discuss with regard to Native participation in the State's
economic development?

Past experience has shown that there's never been total
integration of any indigenous group. And within the state of
Alaska, looking down the road after the corporations have had an
opportunity to work through many different problems, we are going



1 to find ourselves constantly reevaluating different choices,
2 different directions, but at this point, is it safe to say that a
3 portion of the people are going to be inclined to sell their
4 stock, that a portion of the village corporations are not going
5 to succeed and perhaps a portion of the regional corporations are
6 not going to succeed. With that understanding in mind, the
7 question that I would submit is: How are we going to define
8 success? And with that understanding in mind, what kinds of
9 recommendations can be made to assure a higher probability of
10 success in those terms?

MR. BERGER: Thank you Gary.

9 Maybe I could just summarize the point that we've reached at this
10 stage. It seems to me that we start off with what Bart said,
11 that is, that there is an inner conflict that Native people feel
12 and that has been expressed. They felt that there should have
13 been benefits to each of them as individuals from the settlement
14 and in many places those expectations of individual benefit have
15 not been fulfilled. At the same time, because the one thing you
16 get out of the settlement is shares, the way to realize that
17 expectation of individual benefits, assuming the shares have
18 substantial value, the only way to realize that benefit is to
19 cash in your shares, to sell them in 1991, and that, of course,
20 places in jeopardy the Native land itself which may be lost to
21 Native people.

19 So, that's that point I was trying to make earlier.
20 Congress has built in this dilemma for Native people and it's
21 something no other group has had to face in quite this form. It
22 seems to me that's one thing.

22 Then there's the question that Monroe Price raised:
23 "Well let's not write off the corporate mode -- the corporation."
24 It can do a lot of different things. It can pursue cultural
25 values as well as profits. I have no doubt that that is true.
Not only for the Gettys but for some of these Native



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1 corporations. We held hearings in the NANA region last week, and
2 that's a for-profit regional corporation that has a big museum in
3 Kotzebue which certainly is intended to preserve Native culture,
4 at least to give it an important presence in that community and
5 that's an impressive testimony to the fact that for-profit
6 corporations aren't limited to profit-making activities. But I
7 think many of you would be inclined to agree that what NANA has
8 done there is, perhaps is exceptional. I haven't seen many
9 village corporations in a position to pursue cultural activities.
10 As Roland says, many of them don't seem to be in a position to
11 pursue for-profit activities. Well, the settlement said to
12 Native people in Alaska, "You will now have 44 million acres of
13 land." Well it seems to me that really, what Native people are
14 faced with, to me, is the question, "how can we hang on to what
15 we've got?" I mean it's all very well to say, "Well, we own the
16 whole state, it was ours, we have aboriginal title, Congress
17 extinguished that title." Alright, well that's where we sit
18 today -- 44 million acres. The trick it seems to me, is to hang
19 on to that 44 million acres. And that appears to be what Native
20 people want to do. They don't want to give it up.

21 So how are they going to hang on to it? Elizabeth
22 Johnston said that she thinks that there has to be restrictions
23 on the sale of shares. That, it seems to me, diminishes the
24 individual's expectations of benefits, so what's left? And it
25 seems to me that what is left to satisfy that individual's
expectation of benefit is what has been proposed, I think by the
AFN and by others, and that is that the individual should be
given the opportunity to sell his shares to the corporation and
only the corporation could buy his shares. I think that in
dealing with this subject and with others, we should try to keep
in mind a distinction between village and regional corporations,
because it seems to me they are vastly different. If in a
village you had shares that were -- people were allowed to sell



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1 their shares back to their village corporation and half of them
2 did and half of them didn't, so that you had a village where a
3 hundred people were no longer shareholders, another hundred had
4 decided to keep their shares, those remaining hundred would then,
5 through that corporation, really be the owners of all ancestral
6 lands in the vicinity of the village, and it seems to me only a
7 question of time before people would begin to say, "these others
8 are free-loaders." "They are not entitled to use this land for
9 hunting and fishing". And I really think that in the villages,
10 that idea of enabling the corporations to...

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(OVERLAP TAPE, SIDE A)

11 make an offer to their own shareholders to buy back shares is one
12 that people should think very hard about because you would wind
13 up with what we have in Canada in a slightly different form:
14 status and non-status Indians through a series of legislative
15 measures. We have two classes of Indians in Canada. Some are
16 entitled to benefits under treaties, other have lost that right.
17 Some of them lost it by selling out. I won't explain how that
18 occurred. It's just too complicated. I can see people here
19 heading down that same road and I have only gone through this
20 exercise to show how every time we think we are emerging from the
21 thicket, we find that there's some other abyss waiting for us to
22 fall into. And I don't know who thought all of this up back in
23 1971 but it's kind of marvelous in a way, because it really
24 does...

(NOVEMBER 14, 1984)

(TAPE 2, SIDE B)

25 confront people with a series of dilemmas Rosita pointed out
something that I think should not be overlooked and that is the
persistence of Native cultural identity. Wherever I've gone in
the villages, people think of themselves as distinct people in
Alaska. They haven't adopted the notion that they're assimilated



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1 in any way; even where they don't speak their languages, they
2 still feel they are distinct people, they belong to a village,
3 that village has certain land, and not to keep that land in
4 perpetuity, pass it on from one generation to the next... The
5 people speak often the corporate language. They talk about
6 shares and profits and proxies, but in the end they often wind up
7 saying is: "Look!, what I'm really talking about is the land,
8 and I think this land should stay in Native hands in
9 perpetuity." And that seems to me is the bottom line -- that's
10 where you keep winding up. Well, 44 million acres is still
11 largely in Native hands; what's the best way of insuring that it
12 remains in Native hands? Corporate, IRAs, trust, something else,
13 or a combination of them.

14 Well, I...forgive me, I've talked long enough to bring
15 us to 12 o'clock noon, and I think this has been a useful
16 introductory discussion. And this afternoon, with your
17 permission, we will talk about, well, what really will happen in
18 1991, and if any of you have suggestions about the agenda, please
19 speak to Rosita, or David, or me and we can alter it as we go
20 along. So we'll start again at 1:15 if that's okay.

21 (MEETING CONVENES)

22 MR. BERGER: I think we might as
23 well start now this afternoon, and the idea this afternoon is
24 that maybe we could look at the outlook after 1991, that is, let
25 us suppose that there are no changes in ANCSA. What will happen?
Will people sell? What about the 1980 amendments? Are they
helpful? And perhaps we might consider the question, whether the
corporations, all of them at least, will survive until 1991.

I put down John Taylor and Paul Goodwin and Drew
Hageman and Gary Anders here on our agenda just because John
Taylor says he has a doomsday scenario and I thought we might as
well start off with that. After that, the news is bound to get
better, I should think. But all of you, feel free to just catch



1 my eye and participate in the discussion as we go along. So
2 John, we'll turn it over to you now.

3 MR. TAYLOR: Thank you Tom. With
4 such an introduction like that (indiscernible) further down.
5 Really the whole idea of putting together a scenario in the
6 future is sort of like taking a trip down an uncharted river.
7 You know, when you are going down an uncharted river, which we
8 are in many cases, in fact that's really what our discussions
9 have been about -- what if! It pays often to get out and walk
10 down the bank and peek around the corner and take a look and see
11 how you are going to get there. So, I... really I think my
12 purpose today is to add to our roundtable discussion an
13 opportunity to take a peek around the corner, maybe not the
14 corner we want to look around, but a corner, that maybe we need
15 to look around just in case. So I would like to propose a
16 different date for us to focus on. Instead of 1991, why don't we
17 try 2011, twenty years after 1991. And let's make some
18 assumptions. Let's assume that everything that could go wrong,
19 went wrong; for example: as we moved into Congress to come to
20 grips with some legislative changes, we found that the
21 assimilationist mode has not only stayed the same but maybe
22 increased a little and it was almost impossible for us to really
23 get any significant legislative changes through without opening
24 up the entire ANCSA legislation to dramatic changes.

19 Along with that, we could almost look at state
20 politics, and make some of the assumptions also. And assumptions
21 that, as we moved in and tried to change some of our corporate
22 statutes, we found great resistance to changing our corporate
23 statutes, for a lot of other reasons other than Native
24 corporations. In fact we are beginning to find today, some
25 extreme resistance to some of the proposals in our proposed
legislation for other reasons. So let's assume also that our
efforts here in the state to make our corporate statutes,



1 particular[ly] our profit corporate statutes, more flexible
2 really didn't come about very well.

3 Another assumption, today AFN was really incapable,
4 unable -- the group as a unit was unable to come to a consensus
5 strong enough to provide a strong enough political base to go
6 forward in the state or Washington and really have the clout it
7 needed to get the job done. For whatever reasons, we were unable
8 to get that consensus back together again.

9 And lastly here in the state, another assumption that
10 would hold as we look around the corner would be something that's
11 already possibly beginning to happen and that's the shift of
12 political power in the State from the rural to the urban areas.
13 We could very easily see in 20 years... 25 years from now that
14 the rural interior Alaska really has no political clout at all.
15 So let's put that in our assumption also.

16 So given those assumptions, let's take a look at what
17 some variables might look like 20 years after 1991.

18 1. Corporate control: Twenty years after 1991, year
19 2011 we've had corporate failures. We've had one, possibly two
20 regional corporations disappear from the scene, possibly from
21 bankruptcy, possibly from merger. It's a loss in one way or the
22 other of land. Village corporations -- many, many village
23 corporations -- have disappeared from the scene either through
24 legislative acts that failed to renew their status as
25 corporations as they failed to file. Many of the village
corporations became very lucrative take-over targets because they
had land assets, many of them in new-coming rural or new-coming
infrastructural areas that they didn't realize, but other people
did, and they became very quick take-over targets. We had a lot
of shifts in mergers and different corporate ways of
consolidating between village corporations and corporations. In
fact something that's been talked about many times in the 1980's
finally came about between two major regional corporations and



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1 that was the merger of two regional corporations. So there has
2 been some significant shifts in the 20-year period in corporate
3 control and Native control of corporate assets in that particular
4 area.

5 One of the other things that's beginning to take place
6 twenty years hence, is the loss of the Native shareholder base.
7 During the 20 year period from 1971 - 1991 there has been a
8 steady decline in total number of shareholders across the board.
9 That decline continued for another 5 to 10 years after 1991 then
10 all of a sudden the shareholder base started increasing as some
11 corporations started going to the market and selling shares. The
12 impact was that the Native majority shareholder base in many
13 smaller corporations disappeared very quickly.

14 Two markets have begun to take place in Alaska for
15 Native shares. The standard market -- brokerage houses -- but a
16 unique market, unique to Alaska but not unique to stocks, and
17 that's sort of a black market for shares. Any aggressive broker,
18 any aggressive buyer or seller making trips to villages, making
19 trips to the bars--shares were beginning to be bought and sold
20 without control and those people that had the stockholder's list
21 and corporations daily were opening up mail with new share sale
22 certificates. One of the major shifts that had taken place in
23 the twenty year period, particularly in those corporations that
24 had lost land base, Native base control was a shift to income-
25 producing stock philosophies. Back in the 80's, most of the
corporations were usually in a growth-stock position. But as you
begin to analyze what was happening in the year 2000, you begin
to notice that a majority, particularly those corporations that
had lost their Native majority shareholder position were now in
the income stock position, which means they were very aggressive
in the use of their assets.

The first-refusal rights that were proposed back in the
1980's and some corporations adopted, were found to be not very



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1 useful in most cases. What really happened was most corporations
2 couldn't afford the cash flow to pick up all of the tenders.
3 What most corporations really used that for was to stave off to
4 protect themselves against public offering or a tender offer, and
5 they could only afford to do it only once or twice, and they
6 didn't do it to buy all shares, they did it just to buy enough
7 shares to fend off the buy offer and after they had done it once,
8 they weren't in a position to do it twice. The Land Bank really
9 never became widely used. Many small villages opted to go into
10 the Land Bank just before they collapsed. Some villages
11 completely disappeared from the map. Back in the late 1980's
12 after the air carrier, and the marine cargo carriers were
13 deregulated, there were some dramatic shifts in the logistic
14 patterns in rural Alaska. Consequently some villages who now had
15 become cash economic dependent were no longer in a viable
16 position to exist as a village and had to move. Those were the
17 few villages that ended up just dropping their land into land
18 development and walking off. Regionals in the 1990's found it
19 increasingly difficult to change their articles of incorporation
20 and their by-laws. Many waited too long -- too hesitant, didn't
21 know what the future was going to look like and so waited until
22 after 1991 to begin to make the shifts that were needed in the
23 articles of incorporation and the by-laws to protect what was now
24 becoming a minority Native position. Most of the articles and
25 by-laws had been written to protect the majority position and as
some corporations began to see the shift coming, they were unable
to get a big enough consensus to change the articles.

Major changes to the infrastructure of interior Alaska
by 2011 had begun to have a very dramatic impact on certain
regional areas in the villages in those areas -- Bethel, Nome,
Kotzebue had all experienced dramatic infrastructure
developments. These, coupled with the aggressive position with
some of the regionals in those particular areas, really



1 overwhelmed many of the village corporations in those areas and
2 so they had some dramatic cash economy problems, television
3 consumption, consumer consumption problems, ideological shift
4 problems. By the year 2011, many of the villages that 20 years
5 before had seen themselves as isolated rural villages were now
6 rural urban villages and didn't realize it. In the long run, in
7 the year 2011, without any changes, we could easily see ourselves
8 reduced to about 6 regional corporations. Two of them are of
9 merger, the number of village corporations reduced almost to 50
10 percent and most of the land assets of those village corporations
11 are now owned by banks who are selling to developers or are
12 looking at the mining patents and the resource patents on those
13 areas.

14 Now what the scenario is meant to do is provide us with
15 a look at some possible difficulties, and I'm sure there is a lot
16 more that we can think of, but one of the things that scenario
17 development can do is that it can provide sort of a mesh against
18 which all of our ideas about what we need to do, what we can do,
19 what we may have to do, can be thrown up against. And so what I
20 would like to suggest for the next several minutes, if we may,
21 maybe we should add to this scenario just a little bit about what
22 realistic things might happen "if": If some of those assumptions
23 came about and we were unable to make some changes, what do we
24 have to guard against?

25 MR. BERGER: Well, there's the
good news. Who wants to carry on from there? Drew and then
Paul.

MR. HAGEMAN: Just for a minute,
Jack, I think as we look at your challenge, one of the questions
I would ask would be the...one of the dynamic issues is the
likely or, in your doomsday scenario, the actual taking over of
the profit regional corporations. Who are the likely...what
kinds of organizations are the most likely candidates for



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1 take-over and what is the impact that that might have on the
2 other regional corporations with their assets no longer in Native
hands?

3 MR. BERGER: Who winds up owning
4 Doyon, et cetera; that's what you're asking?

5 MR. HAGEMAN: Not who ends up
6 owning it, but what kinds of organizations...maybe it's not Doyon
7 that is top on the hit list. Maybe it's other kinds of
organizations that...

8 MR. BERGER: Well, I say Doyon
certainly for the sake of making it concrete.

9 MR. HAGEMAN: Absolutely.

10 MR. TAYLOR: One of the things
11 that we discussed before amongst ourselves at lunch and something
12 that we just sort of touched on here is one of the problems with
13 protecting against the take-over that we know from the literature
14 now and we know from actual experiences, one -- an aggressive
15 takeover is an extremely expensive thing to protect against.
16 It's extremely expensive in time; you really have to commit
17 almost your total corporate assets to it for that short period of
18 time that they are really after you; the cash demands on your
19 corporation are extreme during that short period of time. You
20 got to have the cash right then to pay a lot of quick, short-term
21 bills. But lastly -- and this is the thing that is going to hurt
22 us the most probably -- it takes a constant effort to adjust,
23 realign, and reevaluate defensive strategies almost on a daily
24 basis. So what organizations are most vulnerable? Those
25 organizations that don't have those capabilities. So that would
lead us to one... village corporations, first, are smaller. Less
cash heavy regional corporations and the ones that look so
obvious, the ones that are cash heavy, resource heavy, probably
the most lucrative looking targets, but also maybe the toughest
target to go after. So realistically speaking, I would suspect



1 that our first take-over targets would probably be the village
2 corporations.

3 MR. HAGEMAN: Village
4 corporations and the regional corporations which may not be able
5 to defend themselves very well.

6 MR. BERGER: Just one question
7 before we go on. Who...Is there any way of predicting, for what
8 it's worth, who would be lined up taking them over? Who wants
9 them?

10 MR. TAYLOR: That's a good guess,
11 but I would suspicion that you are going to have resource
12 development oriented companies. That's really what most of the
13 assets are for. But that doesn't rule out organizations that are
14 looking for cash.

15 MR. BERGER: You mean a village
16 corporation that happens to have a bank account with quarter of a
17 million dollars...

18 MR. TAYLOR: Would be very easy
19 to...

20 MR. BERGER: ...might be a target
21 if somebody could buy up a majority of shares for \$100,000.00?
22 Well, Elizabeth had her hand up, Bart, and then...

23 MS. JOHNSTON: I just wanted to
24 underline what has already been stressed in the area of the
25 difficulty of dealing with a takeover. When we were trying to
take a look at the possible anti-takeover devices, one of the
statistics I stumbled across, and this is with very sophisticated
corporations who can bring to bear all of the things that John is
talking about, who have their plans in place, who are constantly
re-looking them, who have their staff ready in case this is ready
to go, who can mobilize themselves and respond positively to a
takeover offer even in those situations, something like 20 per
cent only of those corporations survive as separate entities.



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1 The others are either taken over by the raider; in other words,
2 it's a successful takeover attempt or the "white knight", the
3 so-called friendly corporation that you turn to for help to help
4 you beat back this offer that you are not wanting to accept. But
5 in either case, if you are talking about only 20 per cent being
6 able, through the anti-takeover devices, to protect themselves
7 from takeover, and that's with the most sophisticated devices
8 that you can bring to bear, what do you think we are talking
9 about then when we put all of our corporations at a risk this
10 way insofar as you wish to keep Native control? I suggest that
11 it isn't, as the expression goes, "It is not a pretty picture."

12 MR. BERGER: Paul Goodwin and
13 then Bart. Would you like to go now Paul?

14 MR. GOODWIN: Fine. I have a
15 little bit different scenario. Not exactly a different scenario,
16 it's just that my time frames are different. I would look rather
17 from now until 1991 and look at a few of the factors that are
18 going on now, but relating to the -- probably the same thing you
19 are saying. In other words, for the most part, if we make the
20 assumptions that you are providing us that indeed for one reason
21 or another, there are no changes to ANCSA; that for the most part
22 I would agree with what you are saying. From now until 1991
23 however, I would point to a few difficulties that may amplify on
24 the assumptions that you are making.

25 First of all, politically in the United States, the
population is getting older, for one thing. It is becoming more
and more conservative. This is apart from the fact that we have
Reagan as the President and so on and so forth. We are becoming
a more conservative society. It seems to me that we are becoming
more assimilation-oriented, less "special interest" (quote,
unquote) oriented and so forth and as a result of factors like
that, it is going to become altogether more difficult to get
changes to ANCSA than we might have expected. As an example, in



1 the late 60's, early 70's when all of this happened in the first
2 place. It will become much more difficult, apart from the
3 Reagans and that sort of thing, who are more conservative anyway.
4 As a result of that, I think the assumption that there are going
5 to be no changes or at least few changes in ANCSA by the time
6 1991 rolls around is a fairly good assumption, and as a result of
7 that, just those sorts of considerations, there are corporations
8 that are looking at tender offers right now. They are not
9 waiting until 1991 or they are not going to wait another two
10 years just to see if the assumptions are in fact correct. I
11 think that they are believable sorts of statements and as a
12 result of that, there are corporations that are looking at this
13 possible takeover. Now...

14 MR. BERGER: You mean
15 corporations outside, looking into Alaska?

16 MR. GOODWIN: Looking into
17 Alaska. A good example of, you know, some of the corporations
18 that would be looking at Alaska in a generic type corporation are
19 the large diversified multi-nationals as an example. Now the...
20 some of these other topics that are on the agenda. First of
21 all, I hope from my point of view, that I've answered the first
22 question, I mean the first topic, "What will happen if there are
23 no changes in ANCSA?" I think that probably the best assumption
24 at this stage of the game is that the changes that will be made
25 will be fairly minor or moderate sorts of changes and that we are
not going to get any dramatic, you know, 50-year extensions to
1991 or that sort of thing. I think that they are going to be
fairly mild changes that can be accommodated.

And then given that, you know, "Will the people sell?"
And what is the value of the shares? Looking at those two
particular items, there is a good example in the fairly recent
past concerning Mobil Oil Corporation and an original tender
offer, I believe it was by Seagrams in Canada. A number of



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1 larger corporations got into that. What finally came, and
2 there's been a number of mergers here lately anyway in the recent
3 past, large corporate mergers, some of which have been defended
4 against by the corporation that is to be bought out. You know
5 it's like you said, "the white knights come in;"...the net result
6 of all of this is that apart from the book value of the stock,
7 the market value is elevated and then that's what the stock is
8 worth. A typical Alaskan regional corporation may be worth 100
9 million dollars in terms of book assets. That would be the book
10 value but without considering the asset value of the land. If
11 there is a particular corporation, multi-national, that wants to
12 come in and make a tender offer that elevates and effects that
13 book value up to a very acceptable market value that does include
14 the land or does include consideration of the land, then will
15 people sell? Well, I think a number of them will, because it is
16 going to be an extremely attractive offer, especially if you have
17 a family situation where there is five or six or ten or whatever
18 it is in your family, each owning a hundred shares. Each going
19 for a very attractive dollar amount because of very attractive
20 tender offers or very propitious takeover schemes, you know, by
21 several corporations. So, yes, in my opinion, I think people
22 will sell when they are faced with that kind of an attractive
23 offer. It may be that they do not wish to alienate their Native
24 heritage, but again it gets down to that heritage, the communal
25 aspect of the Act as opposed to the individual aspect of the Act.
You know, if a very attractive offer is made, there is a number
of them that's not going to alienate their Native heritage
perhaps, but they will certainly give up the communal aspect in
favor of what they get individually. I think that's just a
statement of human nature. It's nothing peculiar to any one
particular group.

In how all of those considerations, anyway, finally
then relate to the 1980 amendments, the right of first refusal,



1 the thing that I would worry about in that, for instance, let's
2 take it as a personal point of view is that who is making...who
3 is placing the value on that stock? If it's the market that's
4 doing that, okay fine, then they can give me that right of
5 refusal if I'm just a disinterested stockholder and I just want
6 to sell it, and it's okay that they want to buy it. There's no
7 tender offers going on at that point. What value are they going
8 to place on the stock? I would worry about that. A few other
9 considerations here: I belong to a successful corporation, NANA.
10 I get dividends every year and always have from both the village
11 corporation and the regional corporation. I say... and you can
12 tell by looking at me that although I am part Native, I am also
13 part white, and I come from a family that is typically that way.
14 The net result in my case came out to be that I am very
15 individualist and very non-communal and that's my emphasis. As a
16 result of that, even though I was raised in Kotzebue, as a result
17 of that for me, the way ANCSA is for the most part works for me.
18 It seems -- it works for me. If I sold my stock in ANCSA I would
19 not be selling my Native heritage as an example. Those things
20 would not be sold. I realize however, that the land is a very
21 important thing for the people, it always has been. That's very
22 traditional and it's been demonstrated through anthropological
23 literature that for a long time, areas have been used by extended
24 family groups which are largely an egalitarian society, but they
25 had categories. One of the suggestions that could perhaps be
made is that the regional corporations can remain the same to
satisfy the individualist aspects of Native Alaskan expectations
with ANCSA, but that the -- particularly the village corporations
and the land associated with that -- be somehow protected. And I
think that that would accommodate something of the two concerns
that originated with you, Bart.

MR. BERGER: Thank you Paul.

That's an interesting suggestion. Claude and then Gary.



1 MR. DEMENTIEFF: I would like to
2 comment on a couple of things that you mentioned and also you,
3 John. It has to relate to the sale of the stock. I think we are
4 talking about two different things. You're talking about
5 individual sale and corporate sale under the gun. They both end
6 up in the same result, but you are looking at two different
7 things. You are looking at the individual sale because of greed
8 or the corporate sale because of necessity -- back taxes,
9 whatever. I can see where the corporate sale under the gun is a
10 potentially dangerous situation not only for the strong
11 corporations, but more so for the weak corporations, but also
12 strong corporations. I question, however, the individual sale.
13 I've seen these hearings going across the state in region
14 meetings about 1991. It's much different than 1971 when it was
15 brand new and corporations were formed. Right now people are
16 becoming informed. They are learning more and more about what
17 can happen to the things that they fought so hard to get and it's
18 changed people. People are thinking different, and I have to go
19 back to what Charlie said this morning. It's not only that our
20 Native people are hardy, but they are proud, too. In that
21 respect, the value of the shares are priceless when it comes to
22 the land. It's much easier to sit here in Anchorage and say that
23 "there's going to be some people selling," and there probably
24 will be. I don't know, nobody knows. We'll have to see. But
25 it's easy to do that, but it's much harder when you are at home
on the Koyukuk River. You got your moose out to thaw for dinner
while you are out cutting wood or setting your traps. That's a
much, much different situation. And in that respect, the shares
represent much, much more than money. And I think because of the
meetings that are being held and the things that are happening
state-wide, that that type of feeling will continue to grow and
hopefully, by 1991, I think that all Native people will be proud
to say, "we don't need to sell", and we'll hope for the best for



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1 the corporations and try to support the corporations so that we
2 don't need to sell. I do have a question for you that I don't
3 quite understand. You mentioned broker marketing of shares. I
4 assume that's a licensed broker coming in, picking up the shares
5 and then attempting to put it on the market. I don't quite
6 understand that because the marketing of shares relates a lot to
7 their earning, the growth or income potential, price and earning
8 ratio, et cetera, et cetera, on the open market. If such a case
9 were to occur, I would assume that it would be on behalf on an
10 individual corporation or multi-national corporation, and I'm not
11 positive, but I think there might some laws restricting that type
12 of relationship with a private licensed broker, so if you could
13 expand on that.

14 MR. TAYLOR: Well, I foresee
15 several things happening. Without stricter laws in Alaska, we're
16 going to have many abuses of the private brokering for shares,
17 and I would think that you are also going to have the quiet
18 takeover of people coming in and buying shares quietly (as you
19 pointed out) to begin the takeover. That's an obvious strategy,
20 particularly in a village corporation. It won't take that many,
21 particular if you have low participation. But one thing that we
22 have not experienced in this state as other states have
23 experienced is, if we look at our states's statutes on brokerage,
24 they are very small and rather unsophisticated compared to maybe
25 California, New York State, and so I think that's an area of
concern; and so my assumption was, "well let's assume we don't
make any sophisticated changes because we're not -- we are --
let's assume we didn't make them our corporate statutes also." I
would see an awful lot of abuse that would be hard to stop on the
short term.

MR. BERGER: Well, you're
talking, if I might pursue this for a moment, after 1991, people
will have the right to sell their shares to their neighbors --



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1 private transactions -- I assume that is so. Brokers can buy
2 shares but they are governed by Alaska's laws relating to the
3 activities of brokers, and you're saying there might be a black
4 market in which brokers would be out in the villages on a weekend
5 trying to pick up a majority of shares by Monday morning? You're
6 nodding in affirmation, I'll just say that.

7 MR. TAYLOR: Yes, that's correct.

8 MR. BERGER: Right! Bart Garber,
9 and then Gary Anders and then Roland Shanks.

10 MR. GARBER: I suppose when
11 the... at least in my view... I mean we can look at these real
12 worst case scenarios and then we can just kind of write them off
13 as worst case scenarios. It's just that real narrow instance
14 comes to mind, however, that may add some realism to it. Claude,
15 you said that people in villages, and I come from a village, one
16 of the few village areas in CIRI, Cook Inlet Region at Tyonek,
17 and I also teach lots of students who come from the Bush and I
18 get to talk to them about their experiences; I mean, I don't have
19 the hearing, this kind of thing, but at least I have some
20 contacts with people even in -- also in farther distances than I
21 am. This -- the idea that they won't sell because they recognize
22 that there is a income potential, or there is more things that --
23 other than just, you know, these values that fall out of the air
24 but real things in terms of hunting. Unfortunately, even with
25 those kinds of interests that are hooked in with the -- with
something that has value; that creates value; there is current
examples that sales and alienation law will occur even though
there's value bound up in it and, I'm talking about limited entry
permits. Where you have a large number of limited entry permits
that have value in them as of themselves. They have lots of
cultural value in them also, and importance to local area. And I
was talking to this one fellow and I mean, I know, particular
instances myself, but what frequently would happen is that the



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1 elder family member who had, you know, worked fishing for a long
2 period of time and knew that -- and it sustained his 8 or 10
3 members of the family, he held on; but the one son who was the
4 helper for a long period of time, and there's, as young people
5 will do, are interested in the GTO in the driveway or interested
6 in going somewhere, don't quite appreciate that distinction and
7 figure that they can always be a helper for someone else and sell
8 it, get the hundred grand and it's gone. So that, even though
9 there are clear values represented by this thing that doesn't
10 hook directly in, you know it's not -- you don't actually... a
11 person doesn't really just come and pick the land up. This thing
12 is associated with the right to fish and to make income and
13 earnings off of it. They still sell even knowing that. So,
14 there is the possibility of distinct populations, you know young
15 guys -- young men or younger people perhaps who haven't
16 established all the contacts in the -- and more than that but
17 have some kind of a dependency on it. There's the possibility
18 that they'll -- they're going to sell.

15 MR. BERGER: Yes, the subject of
16 limited entry has come up in many meetings in coastal villages
17 and people have actually brought it up and said, "People in this
18 village have sold their limited entry permits and if they're
19 willing to sell those than it'll come a lot easier to sell their
20 shares." That point has been -- people have openly spoken of it.
21 I think Gary, you're next.

20 MR. ANDERS: I don't think it's
21 an either or situation. I think that you have to deal with
22 statistical probabilities. It appears that from the evidence
23 that I've seen, a fair number of people with good reasons are
24 going to be inclined to sell their shares and I think that if you
25 look at the motivations for that, there are some underlying
problems that need to be addressed that deal with stability of
the corporation and with profitability. What I'm tempted to say



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1 here is that the survival of the corporation and the maintenance
2 of the land basis is tied with economic development; it's tied
3 with where the state is and it's tied with the condition of
4 Native people in urban areas and in Bush areas. I think that as
5 we go through this time period that we're referring to, we see
6 major changes occurring. We're going to see the economic
7 development opportunities either being constrained or enhanced in
8 certain regions. I have just recently conducted a survey of five
9 major economic sectors in the state and in most cases, I think
10 we're being overly optimistic whenever we profile the
11 attractiveness of regional corporation takeovers, simply because
12 a lot of those industries and a lot of those sectors are facing
13 commodity cycle pricing that makes that corporation very -- it
14 makes it difficult to strategize long term plans. So, in areas
15 where there will be resource development in renewable resource
16 areas in timber and fish and in non-renewable areas of mining, I
17 think there are probabilities that those corporations' stock will
18 be valued and will be priced by outside entities. Along this
19 line, I think that I would like to raise the question: if in
20 fact there are a certain proportion of people that are interested
21 in selling their stock because of some dissatisfaction with the
22 way the corporation is performing, is it not then reasonable to
23 began looking at those motivations and trying to make some policy
24 determination about what can be done to change those shareholder
25 attitudes? I think that one of the purposes of these meetings
has been to increase the awareness of Native people in Alaska
about the importance of 1991 and there have been many
corporations that have made efforts to promote shareholder
understanding of all the complexities, but even with these
efforts you still have a fairly large number of people that are
relatively unaware of what can happen and what they can
realistically expect from the corporation over time.



1 One additional point that I would raise, is that, I
2 think that the time frame, 2011, is a very long run; and I agree
3 with John's worst case scenario if in fact no changes are made
4 and if we see sort of -- many of the negative implications of
5 this scenario taking place. I'd say that they'd probably take
6 place much sooner. And in fact, I think that there is a fair
7 amount of circumstantial evidence to show that that is taking
8 place in terms of the viability of village corporations. And
9 what I'm getting to here is something that was talked about or
10 mentioned earlier on with regard to a statewide Native
11 corporation, development corporation, that would try to not only
12 blend the interests of the regions but to develop plans and
13 support projects that would be beneficial to the Alaska Native
14 community. And in that regard I've heard very little about any
15 sort of systematic planning or any of the cooperative's plans
16 that would promote a more viable development pattern. We've
17 talked a little bit about individual values and that there's this
18 of competition and profit that's implicit in the corporate world.
19 Well, you see that evidenced in the competitiveness of regional
20 corporations. At one time, not too long ago, that at least 60%
21 of the hotel rooms in the state were owned by Native
22 corporations. Many of the economic activities that are related
23 to supporting the oil economy of the state show that Native
24 corporations compete against each other and if we're talking
25 about competitiveness and competitive values one of the ways of
perhaps overcoming that would be to look towards cooperative
projects that would attempt to support development programs that
would maintain a minimum level of livelihood for people that are
going to make the decision to remain in the rural parts of the
state. And I think that, that's a very important consideration.
In other words, if in fact, that one of the principal goals of
these proposed resolutions is to maintain Native ownership of the
land then the question that follows is: "How are those people



1 out there going to live?" Are they going to continue to draw
2 their livelihood from subsistence activities or some combination
of subsistence and...

3 (NOVEMBER 14, 1984)

4 (OVERLAP SIDE A)

5 MR. ANDERS: ...wage economy?

6 And if it's wage economy, if that's an important component, then
7 how do you promote those kinds of jobs and how do you push that
kind of economic development in the...

8 (NOVEMBER 14, 1984)

9 (TAPE 3, SIDE A)

10 MR. ANDERS: ...face of declining
oil revenues, in the face of declining potential state
11 participation?

12 MR. BERGER: Thanks, Gary.

Roland Shanks.

13 MR. SHANKS: Yes, with fear of
14 dwelling a little bit too much on the doom and gloom side, I
15 think I'd like to run through some numbers that I've been playing
16 with. Just kind of thinking about it, a fictitious village that
17 might lie near a large metropolitan area in the state where land
values are high, lots typically sell from \$40,000 to \$50,000, per
18 residential building lot. This fictitious village might have
19 about 127 members. When you start looking at an entitlement of
20 100,000 acres of land which, you know, conservatively is maybe
21 worth a hundred million dollars on the books as far as an asset
22 goes. You start looking at an individual asset of the
23 stockholders of about \$800,000. You start looking at a price for
24 that share of stock based on that value, which you know, there's
lots of market influences and maybe they're looking at what
25 they've received in the past as far as income and what they
expect to receive in the future as far as income. So, maybe you
say that the stock value is worth approximately 1/5 of the book



1 value of the per capita value and you start looking at the fact
2 that it takes about 65 members to take control of that
3 corporation and you end up with a final number of about ten
4 million dollars to fund -- you know, -- an attempt to take over a
5 corporation like that. Then when you go to the bankers and you
6 lay this whole scenario out for them and you start talking about
7 what kind of leverage they might give you on some money, you
8 start talking about some very low figures to start a scenario
9 like that. As far as -- there was a lot of talk earlier about
10 who might lead a takeover like that? Well, I can think of
11 several leading citizens in Anchorage who might be interested in
12 leading a takeover like that, especially with an end prize of
13 that size. So, I think we are talking about, particularly in
14 some areas of the state, very -- a very real scenario when we
15 start talking about takeovers. There are areas of the states
16 where I don't think that a takeover of village corporation is
17 probably, you know, in the near future and I think there are
18 areas of the state where the traditional bonds to the land and
19 the traditional bonds to the village's center are strong enough
20 that they would turn back any takeover of that sort. But we also
21 have to look at the changing nature of our villages and the fact
22 that youngsters are leaving the villages, that the shares are
23 being dispersed from their original stockholders down to
24 inheritances and death and passing on to new generations -- to a
25 broader base of shareholders who have different expectations than
some of the original shareholders did. So, I think when you
start looking at numbers like that, especially when you work for
a corporation like that, you have to start planning because
realistically a corporation like that is not going to be able to
come up with the cash flow to turn back any kind of serious
takeover attempt, and you might turn it back the first time but
you'd surely never turn it back the second time. I guess I just
wanted to add a little bit that, you know, we can talk about



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1 esoteric, you know, "what if" scenarios, but there are some
2 corporations in the state who have already started to put the
3 numbers together and have already started to look at essentially
4 what we're going to have to do as far as defense plans go. When
5 you take these same kind of figures and play them off of regional
6 corporations, there's some of the regional corporations that
7 would be very -- I could see being very interesting too, for
8 certain multi-national corporations who have very -- who have
9 interests in those fields. I guess I just wanted to, you know, a
10 lot of people have been saying, "Well, this is probably still pie
11 in the sky." I guess I just wanted to bring it back to reality,
12 that I can see several candidates and, going through the numbers,
13 I can see where it -- where you don't even have to look outside
14 for our potential takeover scenarios. We can look right here in
15 the state of Alaska.

12 MR. BERGER: Yeah, Glen
13 Fredericks and then Chris McNeil.

14 MR. FREDERICKS: Well, we have a
15 million acres that we hold and we have twelve hundred
16 shareholders. That's 10,000 acres apiece and if we turned around
17 and sold it to the state for \$100 an acre, we'd be pretty wealthy
18 people. Give us the constitutional right to hunt and fish and I
19 think that's what the Natives want and have always wanted. We
20 don't really know how to hold land, we never have. My dad never
21 had a title in his life. Western society has ingrained us to
22 this thing, but if you take a million acres and turn it around,
23 if for the state or Federal government and -- just in our area --
24 give us the constitution. I always thought we made a mistake as
25 Natives. We should have put our hunting and fishing rights in
the state constitution and that's why we have our subsistence
laws trying to change all the time. It would take the whole
state. I think that's a mistake and we did that, I think in the
Constitution of the United States. But talking about the other



1 stuff, I think there's a way right today that this
2 corporations... I don't worry too much about 1991, myself, I
3 think there's other ways we could survive. One is separation of
4 land and money.

5 I really believe in my mind that United States Congress
6 -- we settled for two things, two big things, one was the land
7 and one was the money. The money I got is the shares I own right
8 today, not the land value. I haven't put any value to that land
9 and I don't intend to and it'll take years and years just to try
10 to figure out how you're going to evaluate the land anyhow. But
11 I keep saying to myself, that if there is a way and we are
12 studying this proposal and going to go into more in depth, is
13 separation of the land. Put it into another corporation,
14 association, co-op, something and then you have the shares, the
15 money that you -- we now got from the federal government. That
16 would become the shares we're talking about in 1991 and who in
17 their right mind would want to buy that then, you know, if you
18 separate the land. You can do it I think today. I think there's
19 ways. Co-op is one way that... state of Alaska has that and
20 there's no dissenters' rights. Why we say we don't want
21 dissenters' rights? Because we've got to have time to evaluate,
22 I think, our property. If there's dissenters, then we'll have to
23 sit back and try to evaluate and we'll come to all kinds of
24 lawsuits, I believe. But co-op, I believe there and if I'm --
25 these are the things we going to study and give our people the
option. I think there's a way we could separate that land. Then
what do you do when after you're separated, you want to go into
business? You go into your land company and identify, say a
thousand acres of timber. Take that acreage out by lease. Some
kind of lease agreement for a hundred years and it would revert
back to the association or co-op when we depleted or used up the
resource. At the same time, I believe, that company or that
corporation, timber corporation, can issue stocks to the same



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1 shareholders that I have, twelve hundred and twenty of them. I
2 also believe that this new company can issue shares to non -- the
3 kids born after '71. There's nothing in the law that says we
4 can't do that. The only law that says that is the '71 stock, but
5 if I made a corporation today, I think I can issue stocks, maybe
6 not 100% stock, to the kids that were born after '71. I say the
7 way to do it is to separate that land. If there isn't a way,
8 then we ought to find out how we could change that law, either in
9 state statutes or go to Congress. I personally don't feel very
10 good about going to Congress and try to change things because we
11 always get everybody's opinion, we don't get what we want. But I
12 think to deal with the state is more efficient, myself.

13 But those are some of my thoughts and I -- what I'm
14 doing for your information is compiling all this stuff and see
15 which way is the best way to do it. All the people that I work
16 for out there, twelve hundred and twenty shareholders, say, "Keep
17 that land at all cost," and my job then becomes, to find out
18 ways, some way, to keep that land if that's what they want.
19 That's my job and I think one way is to look at the corporate
20 structure of State of Alaska. If there is -- could be separated,
21 you know, by -- with our bylaws, I think today we can separate
22 that because we as corporate officers and people that deal with
23 the corporation have already separated big amounts of cash, you
24 know, when we buy something we already have separated the stock,
25 so, I think it could work, you know, but the people, the majority
of the people, have to vote on this and they're the people that
own that stock. I think it can be done, right today!

MR. BERGER: Yeah, thanks Glen, I think we should return to that subject. Chris McNeil.

MR. MCNEIL: I want -- Can you hear me? I want to focus for a second on the question of individual behavior and the sale of stocks because I think it's important, especially if there were no impediments to the sale of



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1 stock after 1991. I think there's a strong suggestion that they
2 are a lot of normative beliefs out there wherein shareholders now
3 believe that it's important for cultural and many other reasons,
4 not to sell the stock. At Sealaska, we had done a survey a
5 couple of years back and I don't think there's any question that
6 there are at least some cracks in that theory. When shareholders
7 were asked whether or not they would sell the stock, most of the
8 shareholders answered very emphatically, that "no they wouldn't."
9 There was only one or two percent, I think, that said that they
10 would do that but when they were asked whether they thought their
11 neighbor would do, then the percentages went way up. I think you
12 were starting to look at the 20% range when that occurred. I
13 think even at that point that, you know, there may be some real
14 variance and behavior as to what people actually do and what they
15 may say they do. There's also -- seems to me, there had been the
16 suggestion that there is a long-term value insofar as maintaining
17 the ownership of stock, both as to the inherent ownership
18 interest and as to the potential of mergers. It seems to me that
19 there is a case being made right now, certainly in this
20 administration that, in fact, mergers are good for the economy.
21 They grease the skids of the economy. In fact, they're, I think
22 there are some work being done in the SEC to prevent the
23 anti-repellant measures that, you know that have been adopted by
24 some corporations because the argument I guess is that, in fact,
25 that's not good for the shareholders or the corporations and it's
just a dissipation of assets. I don't believe all that but it's
a case that in fact is being made. I think what maybe is really
quite important is a kind of a -- it may be a conceptual
inconsistency insofar as the ownership of the stock is concerned,
because after 1991 that stock, to a great extent, will become
money in the bank as opposed to a piece of paper that's filed in
a drawer someplace or left. I think what you will have is not
really a question of greed or even a question of choice. It's



1 really a question of the economics of the situation insofar as an
2 individual is concerned. Seems to me that the theory of stock
3 ownership is -- at least is predicated on some assumption that
4 you have some surplus value or capital in order to be able to
5 make the investment in the first place. In this case there was a
6 trade of a vast amount of rights in order to obtain that
7 interest, but after 1991 you have a situation where people will
8 have money; and it seems to me that you have to have money to
9 keep money in the bank or you have to be able to have some level
10 of surplus in order to sustain that investment if you want to
11 think of it in terms of an investment. And I think this is
12 really critical 'cause I -- in my view, you can draw a
13 demographic map of the state and it seems to me that what you
14 would find is sales that are made by people, not really because
15 of choice, but because of a need, because there is a need in
16 order to sustain a living. I think that in some sense it lies in
17 the idea that there really is choice. I look at that really as
18 more of an involuntary situation rather than one where people
19 actually affirmatively decide that they're going to sell the
20 stock. And one of the other sides of this too is of course, if
21 things go as they are, the judgement-proof element of that stock
22 also evaporates and it strikes me as, if I were a creditor, I
23 would certainly be looking at my hole card insofar as trying to
24 make a collection on any debts that may be past due. It seems to
25 me that all of these things are fairly important in thinking
about it because, I think, it focuses a little bit more attention
away from the idea that it's just a question -- a pure question
of what people will want to do or what they think they'll want to
do, rather than a question of what they will do based upon being
able to survive, because you really can't eat belief and you
can't feed yourself with a belief and I think that those
questions will become increasingly important.



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1 The other thing that I was thinking about here is, as
2 the discussion has gone on, in talking about mergers and forces
3 external to the corporation, is that it seems to me that one of
4 the things that 1991 does is that it created kind of an immediate
5 focus on survival, because I think there's a great deal of
6 concern that there would be sales and loss of control. But it
7 seems to me that there has to be maybe a bit more focus on what
8 shareholders and the owners of the corporation believe to be the
9 objectives of 1991, I mean objectives of the Claims Settlement
10 Act itself, using the 1991 really more as a focus. And it seems
11 to me that there are a number of objectives out there, some of
12 which there in fact is some debate about and that those debates
13 really aren't always in focus. For my own part, I really think
14 that ANCSA was meant to create some level of long-term ownership
15 and with that, some long-term benefit; and it seems to me that if
16 you get there, whatever you create has to have some kind of
17 productivity to it, otherwise the benefits will not accrue. One
18 of the other objectives that seems to me that has been discussed
19 here, is the question of self-determination, which comes out in
20 the form of talking about control of the institutions that you
21 created and talking -- although it hasn't been voiced here, the
22 question of sovereignty insofar as self-government is concerned
23 and human resource development.

18 And then in addition to that it seems to me that these
19 institutions and shareholders also have a -- we've enunciated a
20 great deal of interest in being able to maintain and sustain
21 culture and other normative objectives and when you get around to
22 looking at these kinds of things, it seems to me, in some part
23 that the AFN -- some of the AFN recommendations may be a little
24 ambivalent, on for example, the issue of ownership. And it seems
25 to me that there is a split in some way in analyzing the issue of
ownership and control, because I think people have discovered
that you don't need total ownership to continue control and that



1 cuts all kinds of different direction. So, I don't know where it
2 really takes you but I think that at least those two concepts
3 have to be separated because I really think the question of
4 long-term ownership and the distribution of wealth is the very
key one here insofar as 1991 itself is concerned.

MR. BERGER: Thanks, Chris.

5 Ralph Johnson.

6 MR. R. JOHNSON: It seems to me
7 that in a simple world, one can divide the Native community into
8 two groups. I do this hypothetically because the world never
9 quite divides in such simple lines. But there are those who wish
10 to sell and who wish to assimilate and who -- or who are
11 assimilated in the larger culture who decide to live in San
12 Francisco, Los Angeles, Seattle or whatever, take their money,
13 invest in different things, go to the Bahamas, do what lots of
14 other folks do from time to time; and to those people, except for
15 their cultural memory of being an Alaskan Native or a descendant
16 of Alaska Native, the retention of land is not of great
17 importance. On the other hand if we take the scenario that Jack
18 Taylor has mentioned: let's look at 19 -- at 2011 and let's ask
19 the question, "How many of the Native people still live on the
20 land?" I don't mean by choice or by otherwise but because of all
21 kinds of circumstances, they still live on the land. They live
22 there... and let me play the part now, of a government
23 decision-maker who is worried about: How much money is going to
24 be paid out in welfare payments? and, How many poor people will
25 there be in the United States? What is the general welfare of
the Nation? How rich will the country be in cultural diversity?
At that point around the year 2000, I'm going to look at the
Natives who still live on the land and who now don't own the land
and I'm going to realize that they're worse off. Their culture
has been damaged, their economic opportunity has been damaged and
so, to those people who wish to live on the land or who are



1 required to live on the land by cultural choice or economic
2 necessity, it's really critical that they not lose the land and
3 lose that future opportunity. It isn't as if they are going to
4 decide, "Now having lost the land, we'll all move to Florida."
5 There are all kinds of reasons that many people will not move to
6 Florida or somewhere else. They're going to stay there. So,
7 when I look to 2011, those people are still on the land, it's
8 critical that the nation as a whole, make that land an asset that
9 can be developed. Even though it's minimal, it certainly is a
10 lot better than living there without the land.

11 Now, one other point and that is: If it is entirely
12 feasible for those who wish to remain on the land to sell, they
13 may sell either out of a misunderstanding of what the
14 consequences of that sale would mean -- and I call forth the
15 experience of the allotment process in the Lower 48, where people
16 didn't understand that and over a period of 1887 to 1934, lost
17 about two-third's of the land and were worse off because of that.
18 They were simply worse off, they may have had some cash for a
19 little bit, but they were worse off; or these people may sell
20 because they urgently need cash at a given moment, some temporary
21 emergency. Well, I suspect that, in that situation, there should
22 be some protection against the loss of that land because their
23 future and their children's future, not by choice, but because of
24 cultural demand or imperative, will be that they will remain on
25 the land. So, it seems to me that you have those two groups of
people: those who wish to assimilate or go elsewhere, to which a
sale provides cash and an economic opportunity, the Adam Smith
kind of opportunity to go and buy and sell other stock or other
land, and the second group, who in fact will remain on the land
and for whom that is very important that the land remain in their
possession or in their right.

MR. BERGER: David Case.



1 MR. CASE: Kind of following up
2 on that Ralph, and a couple of other things that have been
3 mentioned, maybe I was relieved to find out that 50% of the
4 village corporations would still be left, is that what you
5 thought even in the worst-case scenario. That's a hundred
6 villages. What would those villages -- maybe you wouldn't even
7 know this -- I mean, I don't know how deep your crystal ball is,
8 but what would account for the survival of those villages? I
9 mean, what -- would they have some kind of land holdings that
10 would be different from the villages that didn't survive? Would
11 there be anything that in general distinguishes them from the
12 villages that didn't survive, the village corporations that
13 didn't survive as land owners?

14 MR. TAYLOR: Yeah, unfortunately,
15 I guess in our analysis of that, it was our feeling that those
16 hundred villages really would represent fewer corporations 'cause
17 they were probably the villages who had banded together in a
18 cooperative effort or in a joint effort where they had pooled
19 their assets. Our numbers of looking at how many would not
20 survive was typically based on those who stayed alone; and so the
21 smaller, probably the less chance of survival.

22 MR. CASE: Okay, I have a couple
23 of questions because it seems to me that often the issue of
24 whether the land is at risk really might come down to what kind
25 of land are we talking about? If it is tundra, isolated tundra,
and leaving apart the subsurface value, if any, then I'm assuming
that that's not too attractive as a takeover asset that is
desired by a takeover company. Is that a correct assumption?

MR. TAYLOR: Okay, why not?
Well, one of the areas that Tom asked about is, who would be
interested in a takeover? Let's put it this way. If you were to
put in the newspaper in the Lower 48, almost any newspaper, "Buy
a hundred thousand acres of northern Alaska, cheap," all you got



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1 to do is get a little leverage at the bank. Hunting, fishing,
2 beautiful scenery. It'll sell.
3 MR. CASE: Okay.
4 MR. TAYLOR: So, I...
5 MR. CASE: So that even the value
6 of the land for its hunting and fishing...
7 MR. TAYLOR: I think there's so
8 many other values -- yeah.
9 MR. CASE: ...that you could turn
10 around to a commercial value.
11 MR. TAYLOR: I think there's so
12 many other commercial values besides resource development...
13 MR. CASE: Uh-huh.
14 MR. TAYLOR: ...that small
15 villages with tundra land are going to look economically nice to
16 some group some place.
17 MR. BERGER: Lot of dentists in
18 the Lower '48 with money to burn.
19 MR. TAYLOR: Well, we found in
20 the Lower '48, in Wyoming as an example... I come off of a ranch
21 family in Wyoming and I grew up looking out there at that
22 rolling, grassy nothing, and saying, "my God, who want's this
23 besides a cow, I don't." They're now selling that for thousands
24 of dollars an acre for people who want to live out there.
25 MR. CASE: Well, so, is your
conclusion, then, that really what makes the difference between
the corporations that are -- that survive or villages that
survive with holding land is the structure that they have
assumed, the corporate structure.
MR. TAYLOR: Yes, that was our
basis. We felt that those corporations who got together, who
banded together, who had more management talent, more assets,



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1 were in a stronger position to be able to maneuver and not to be
2 picked off first.

MR. CASE: Right. Okay.

3 MR. BERGER: Could I, just before
4 we go on there, there's something that I wanted to ask -- maybe I
5 could ask Elizabeth Johnston about it. It's about Alaskan state
6 corporate law and maybe this is a stupid question, but someone
7 has to have the nerve to ask the stupid questions. If you have a
8 buy-back provision and you buy back shares from your shareholders
9 -- that is, suppose Bristol Bay Regional Corporation buys back
10 shares, then those shares simply go into the treasury, do they?

MS. JOHNSTON: That is correct.

11 MR. BERGER: And nobody can vote
12 those shares?

MS. JOHNSTON: That is correct.

13 They could be reissued.

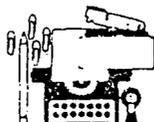
MR. BERGER: Could be reissued.

14 MS. JOHNSTON: Yeah, depending on
15 what the total view is of, you know, do we have restricted stock
16 or not? But...

17 MR. BERGER: But, so they are
18 just -- they go back into the treasury and they're unissued share
19 capital. I had another question if I could find it here. And
20 the corporations such as Bristol Bay, are the only corporations
21 now, given the restrictions on the sale of shares, you are the
22 only... Native corporations are the only corporations in Alaska
23 that can't issue shares to raise money?

24 MS. JOHNSTON: That is my
25 understanding.

MR. BERGER: And after 1991, in
addition to having shareholders who might go around selling
shares, your board of directors could vote to issue shares from
the treasury to double the number of shares?



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1 MS. JOHNSTON: Sure, and I think
2 that whole business of raising money is one of the concerns that
3 corporate management has to evaluate, the recognition that if
4 Native control is important (and remember I'm saying "if," only
5 in the context of the sentence, not that I do not think that
6 Native control is important, but if you value Native control
7 which leads some of us to the conclusion that restricted stock is
8 an extremely important route to pursue), then you must recognize
9 that there is a price to be paid for it and the price to be --
10 one of the prices, in addition to dealing with Congress, another
11 price to be paid for is the lack of ability to raise funds in
12 that way unless you were to crank that in somehow too with a
13 different type of stock issue and the question would be, if you
14 did, then who would be interested in buying it if they had no
15 impact on control? You see, you -- in economic terms you've --
16 there's really no real alternative there, I think.

17 MR. BERGER: Nobody could acquire
18 equity in the company?

19 MS. JOHNSTON: Yeah, I mean if
20 you really tried to, on one hand pursue Native control, on the
21 other hand tried to pursue a mechanism by which you could raise
22 equity or some other type of financing, say preferred shares, you
23 know, who would invest it? It would have to be in a corporation,
24 and I can think of only one at present that had a strong history,
25 a very strong management and very strong earnings, to be able to
swing both worlds.

MR. BERGER: But, to go back to
what you said this morning, you are convinced that, in order to
keep Native control of Native corporations, the only sure answer
is to restrict the sale of shares after 1991 and you would
therefore say that they shouldn't have the power to issue shares
from the treasury to the bank or mortgage company.



1 MS. JOHNSTON: That would be my
2 conclusion, yes.

3 MR. BERGER: Yeah, I'm -- Gary
4 Anders.

5 MR. ANDERS: I just got a couple
6 of questions with regard to some of the issues that have been
7 brought up in the readings that I've seen, and that deals with
8 special benefit programs for the new Natives and for the elders
9 with regard to stock, or the different kinds of ideas that have
10 been raised in creating special stock certificates for new
11 Natives. It seems to me that you're really not changing the
12 asset base of the corporation. As a matter of fact, when you
13 double the number of shares, you're creating more shareholders
14 and distributing a thick size pie, in terms of the overall
15 dividends to many more people than before and that would create
16 quite a bit of controversy at the village level and probably at
17 the regional level. I don't know the answer to this, but it
18 seems like there are built-in mechanisms that could be of a
19 cultural nature in dealing with special classes of shareholders.
20 By that, I mean I heard Rosita talk this morning about the
21 vitality and the strength of Native family bonds, of community
22 patterns that have been in existence for so long. When we look
23 at these communal values and talk about them, it seems that
24 implicit in the way people behave, would be an attempt to utilize
25 dividends or income derived from a corporation to make special
efforts to accommodate the needs of older people. And I'm
wondering if, in fact, the idea of creating different classes of
stock or issuing new stock is a plausible one?

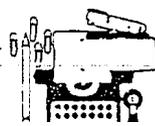
22 MR. BERGER: I hope you're not
23 asking me that question. Did you follow that Elizabeth?

24 MS. JOHNSTON: I think I -- well,
25 Monroe, would you like to go with it?



1 MR. PRICE: Well, I guess, I
2 wouldn't mind talking about it in the context of what you said
3 and what Tom said about restrictive stock. Let me ask you this
4 kind of question. This is a roundabout way of answering this.
5 Could it be conceivable for Bristol Bay or a corporation to say,
6 "Let's take certain assets that we now hold," that, let's say are
7 subsistence lands, subsistence lands or some other subset of
8 assets of the corporation, and "put those in a corporation in
9 which the stock will be restricted. Put other assets in a
10 corporation in which stock will not be restricted." So, do you
11 look at your asset base or your total assets and say, "To what
12 extent is this a question of all or nothing, or is there an issue
13 here in terms of saying, what are the assets that need to be
14 controlled? What is it over which Native control must be
15 maintained? And then as to other assets, have a different form
16 of pursuit."

13 MS. JOHNSTON: I'll do a subset
14 under that then. When people talk about, "Let's take the assets
15 and split them into different categories," it raises two
16 questions in my mind and, Monroe, as you were addressing at
17 least, that you covered some of them. One is, that if you're
18 going to take -- at least under Alaska State corporate law as you
19 know -- if you're going to take assets and start moving them
20 around... and particularly when you're talking about land, which
21 I think most of us would feel would be something that, not only
22 arguably but I will now use a word that a lawyer doesn't use, I
23 will use the word "morally..." should be taken to shareholder
24 vote. Because if you're talking about many, at least in the
25 Bristol Bay Region, many of the village corporations, I think
there's no question as a matter of law, that land is all or
substantially all of the corporations assets. So there's no
question but that under state law, if you're going to start
moving things around you're going to have to go to shareholder



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1 vote. In addition to going to shareholder vote and having a high
2 standard of passage for that transaction to go forward, you are
going to have dissenter's rights.

3 MR. BERGER: Excuse me...

4 MS. JOHNSTON: Yes.

5 MR. BERGER: ...Elizabeth, just
before you on...

6 MS. JOHNSTON: Yes.

7 MR. BERGER: ...what do you mean
"high standard of passage?"...

8 MS. JOHNSTON: Okay.

9 MR. BERGER: ...What does the law
10 require?

11 MS. JOHNSTON: Good. My memory
is two-thirds. Is that your memory Bart, that for something...?

12 MR. GARBER: For extraordinary
13 events.

14 MS. JOHNSTON: ...for
15 extraordinary events, like the sale of all or substantially all,
16 is a two-thirds standard. Now, I'm talking about the law as it
17 is in present state statute; I'm not talking about how we could
18 reconstruct should we desire to, I'm talking what is. The third
19 thing, I think, that should be mentioned under that is that you
20 move assets. And again, Monroe, I know I'm carrying coals to
21 Newcastle in your case, but is the dissenter's rights -- and of
22 course dissenter's rights although, as Bart referred to it, are
23 not always built into corporate law. Where they are built in
24 they were meant to balance rights out. The whole game is
25 changing. You presently have a corporation with all of these
assets wrapped together; suddenly you're going to take and in the
village -- in our villages case, the major asset out and move it
someplace else. If you're going to do that, what about the
people who don't want to go along with that. Do you just say,



1 "you can stick it in your ear," which is one of the expressions
2 that I've heard being said around. "Who cares what the minority
3 wants?" Or do you go with the balance where you say, "Minorities
4 have rights too, we will look to all our shareholders and look to
5 what we accomplish and try to balance rights out." But under
6 present state law, you would have to acknowledge and deal with
7 dissenter's rights, if you were going to move land out. At
8 least, Monroe, in your example you gave, you explained something
9 which nobody has ever bothered to explain to me, which is, who it
10 was you thought was going to own this new entity. Many times
11 people keep talking about, "we're going to, you know, move these
12 assets around" and they don't take the next step and say "who's
13 going to own that entity?" And you'll see them drawing elaborate
14 structures and it will basically be, if I could -- this won't be
15 the Bristol Bay case, but if Bristol Bay were to move the land
16 out someplace else, and it would often be Bristol Bay that would
17 then be the parent corporation. So, if somehow the parent is
18 attacked, so is the subsidiary, you know, that really nothing has
19 been accomplished except for everybody says, "we've separated the
20 assets out, it's accomplished nothing." In the circumstance you
21 gave, you definitely accomplished more than that.

17 MR. PRICE: Well, I guess, I was
18 then...

18 MR. BERGER: Excuse me, Monroe...

19 MR. PRICE: Yeah.

20 MR. BERGER: ...could you go back
21 and tell us what your example is that was so clever, because it
22 passed me by.

22 MR. PRICE: I'm not sure it's so
23 clever. It was really in response to your question to Elizabeth,
24 which was, "Is the only way to maintain Native Control to
25 restrict stock?"

25 MR. BERGER: Yeah.



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1 MR. PRICE: And I guess, I was
2 asking the question. The answer to that may be "yes," if you
3 were asking the question: Maintain control over what? That is
4 to say, you could look at the -- you use the term 44 million
5 acres, that's probably not the assets of Alaska Native
6 corporations. There's money, there's deals, there's land, there
7 are a variety of things that are a mix of things. Any particular
8 corporation might look at that mix and say, "Here is where it's
9 important in maintaining control." This is aside from the
10 question of who asked that question and who answers the question
11 but just in the abstract, what are -- what kinds of control is
12 necessary over what kinds of assets? And then the question would
13 be answered differently, that's really what I was really trying
14 to say: is there an example one can think of in which a
15 corporation might say, "yes, we must maintain control and we must
16 restrict the sale of stock, but not over everything which is
17 currently under restricted stock ownership?" Now the reason
18 that's an important question with respect to Mr. Anders'
19 question, is you could take some assets of a corporation and say,
20 this is for elders. You -- I mean, an entity can make... aside
21 from state law and federal law questions I'm putting aside for
22 the moment because I think that those are actually conceptually
23 addressable and politically addressable. The question is whether
24 you want to. You could say, "Alright, I'm a -- the corporation
25 has fifty million dollars in assets, ten million dollars should
be used for elders -- that is not subsistence land -- that is
marketable stock or certificates of deposit or joint ventures
with somebody or other, et cetera, et cetera, that ought to be
segregated out. It's not subsistence land. It's not X, it's not
Y. What we want to do with that asset is segregate it and use it
for elders. Use it for education or use it for speculative
opportunities to act out. So, it seems to me that, you know...



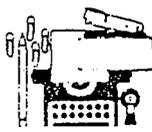
1 and then that doesn't foreclose noncorporate solutions as to the
2 remainder.

MR. BERGER: Well,...

3 MR. PRICE: I guess that's the
4 answer to -- I mean that's what I was thinking.

5 MR. BERGER: ...I'm not any
6 farther ahead. You go ahead and see what it...

7 MS. JOHNSTON: Okay, let me
8 just -- I'll get off law, which should be a relief to us all and
9 I won't be stuck for malpractice. What struck me, Monroe, about
10 what you were saying is this. As I think over the balance
11 sheets of the corporations with which I'm familiar, which is
12 obviously not two hundred and twenty, but a much smaller group,
13 when you think about taking all of the things we've talked
14 about... Who wants to take over? What they would pay for it?
15 It has to do with a group of people and, as Roland says, he can
16 think of a few that are located right here in Alaska who would
17 have both the motives and the wherewithal to do this -- but it's
18 because they would be taking in assets and using them for a
19 totally different purpose than the Native community may want to
20 use them for. That the value of subsistence would hardly be one
21 of the values that you would be willing to purchase these lands
22 for. Okay, and that's of course, where the wealth is created,
23 the wealth in our scheme, in our -- in the dominant society's
24 view of what wealth is. On the other hand, you have some of the
25 corporations, because of where they're located, because of the
mix of their shareholders, they said "no, we want this land for
subsistence;" now where that's going on and the basic asset left
in that corporation is the land, talking about, you know setting
aside -- I mean you can talk about setting the land aside and
restricting the stock, but for that kind of corporation I'm
describing, splitting it out doesn't accomplish anything; it's
the restriction that accomplishes it. It's really very few of



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1 the Native corporations that fit the description you're talking
2 about. Where you have a cluster, a tremendous cluster of
3 assets... where you have the land that might be treated in one
4 way and some of these other major, already wealthy, economic
5 assets that might be treated another way. That, I don't think, is
6 the major case. The major case is, at least for the village --
7 the bulk of the village corporations, is land that is either
8 going to be taken over by other people where, you know, it's
9 bought for pennies per acre and then turned into the kind of
10 wealth that the dominant society views as wealth or it's going to
11 be utilized for subsistence, and that's just a question of
12 control. But there's no wealth there in the predominant
13 society's sense that you can then translate into something for
14 elders, unless you take that land out of being used for
15 subsistence.

12 MR. PRICE: Let me ask a
13 questions and that is, assume that -- let's take -- let's assume
14 for the moment that most village corporations -- the major asset
15 of most village corporations is land and most or all of that land
16 is needed for subsistence purposes. Would you trade the
17 opportunity for restriction on the land -- let me put it to you,
18 let me see how I want to put this -- would you say that stock
19 could be restricted or land could be frozen, but only if the land
20 is maintained for subsistence purposes? That is to say, you
21 can't have restricted stock and assets which can be used for
22 non-subsistence purposes, or generally speaking. I don't want to
23 -- is this a...

21 MS. JOHNSTON: I wouldn't because
22 I know, first of all, Bristol Bay shareholders are for restricted
23 stock, the majority of them. Second of all, Bristol Bay Native
24 Corporation owns so little surface, that for me to talk
25 meaningfully about Bristol Bay setting aside anything for
subsistence, you know, doesn't make any sense.



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1 MR. PRICE: I'm talking about the
2 villages. Is what's being suggested here, that's -- it's
3 important to maintain restrictions because it's important to
4 maintain subsistence. If Congress then said, "we'll accept that
as a package," is that a suitable objective?

5 MS. JOHNSTON: It might be for
6 the villages, but I don't think it would be for the regions.

7 MR. PRICE: I'm talking about the
8 villages, I'm talking about -- I think...

9 MS. JOHNSTON: Yeah, it might be
10 for the -- and I'm not from the village so, Glen...

11 MR. PRICE: ...I think we should
12 restrict it.

13 MS. JOHNSTON: ...can you respond
14 to that?

15 MR. FREDERICKS: I say restrict
16 it if Congress goes along with restriction. Then, definitely,
17 you know. And they are saying that's what we are all going for.

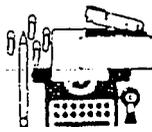
18 MR. BERGER: Well, Glen, just to
19 make sure I understand this, the suggestion is that a village
20 corporation, whose principal asset is land, might seek to have
21 its stock restricted in perpetuity, but if you had a corporation
22 that had other assets besides land it would only be as to the
23 ownership of the land that sale of stock could be restricted.
24 That's where I fall off the wagon here because I don't quite
25 understand how you have some stock restricted and other stock not
restricted unless you have two separate corporate entities.

MS. JOHNSTON: That's what Monroe
is suggesting, yeah.

MR. PRICE: You can have -- I --
you can have...

(NOVEMBER 14, 1984)

(OVERLAP TAPE, SIDE A)



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1 MR. PRICE: ...two -- I guess
2 that's the point that I was making earlier is that it's not --
3 this is not a sophisticated step to say, take the assets of a...

4 (NOVEMBER 14, 1984)

5 (TAPE 3, SIDE B)

6 MR. PRICE: ...there's a
7 different conversion in the village corporation, but you -- if
8 you had a corporation that had subsistence lands and other
9 assets, real estate in Anchorage, own the Calista Hotel -- own
10 the hotel, then you could put the hotel in a corporation, the
11 stock of which is not restricted and maintain restrictions on the
12 stock which held the lands, the subsistence lands.

13 MR. BERGER: And you issue the
14 shares in the -- new shares in the new corporation to the same
15 body of shareholders as hold the restricted stock in the existing
16 ANCSA corporation. Is that correct?

17 MR. PRICE: Correct! That
18 certainly is not the only way but, yes...

19 MR. FREDERICKS: We don't want
20 to, though. What I'm saying is, I think the shares of stock that
21 I got... and I've bought buildings here in Anchorage. We have
22 apartment buildings, office complexes and so forth in Anchorage
23 here with that money -- the stock. What I want to do is separate
24 and continue that stock in the old company. The Kuskokwim
25 Corporation will hold that and move the land to another company
-- association, preferably -- and the village people or the
shareholders then would have -- be members automatically to the
land company, land association. Now the question I would ask
people here is, "can [this] be done legally or is there
restrictions on it, or what, and hopefully we can go into more
depth than this, because in my mind you can do that by the
shareholders' vote, majority of the shareholders, I would think.



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1 MR. BERGER: Could I just
2 interrupt, Glen? I think you've gotten us to a point in the
3 discussion that it's about time we reached, but maybe I could
4 just suggest how we might proceed. We -- we're going, tomorrow
5 morning, to look at the AFN resolutions because they've got these
6 resolutions, and I think we should take a look at them and
7 comment on them and I should think that would be useful all
8 around to the AFN and to everybody else. And then we were going
9 to ask some of the people from the village corporations to speak
10 about the way they perceive some of these things tomorrow
11 afternoon.

12 But let me just see if I can pursue what you've said.
13 You say that your people, your 1200 shareholders, have said to
14 you, "You continue to have fun with all of our money in Anchorage
15 and you buy and sell and do all these interesting things, but you
16 make sure you don't lose our land. You make sure we keep our
17 land." And you're saying, "Well, can't we transfer that land
18 to..." you said, "...a cooperative and under Alaska State Law,
19 held by the cooperative whose members consist of the same body of
20 shareholders as now are shareholders in your Kuskokwim
21 Corporation." That's one thing that perhaps some of the
22 attorneys here would like to address. There was a little bit of
23 attorney bashing this morning, but I think that we would all like
24 to hear what they've got to say, but could I ask you also to
25 consider a couple of other things. Is a cooperative presumably
as safe from corporate failure, that is, if it isn't in business
to make money or to lose money, if it isn't taking risks, then it
won't lose the land through bankruptcy. The other thing you
might address, is, what about taxation of lands or lands held by
cooperatives or other entities liable to taxation. And it seems
to me -- I should say that many places I've gone in the state,
not "many" places, "many, many" places, people have talked about
IRA's and one of the advantages, I think they have, is that land



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1 held by an IRA or by the Secretary in trust, is not liable to
2 taxation. Now, that's something that hasn't even been discussed.
3 Everybody's talking about takeovers, but it may be that in the
4 90's taxation is a subject of some consequence. So, if you don't
5 mind my rolling all those things into Glen's question, perhaps we
6 might spend a little time kicking those things around.
7 Elizabeth, I think you have the floor.

8 MS. JOHNSTON: How does one get
9 even with you? Glen's idea of taking the two sets of assets -- I
10 want you to realize, I know very little about cooperatives, so I
11 can't talk about the merits of things being held in a cooperative
12 structure. I just can talk about the fact that to move it from
13 the corporate structure to the cooperative, right now there are
14 procedures that need to be followed. It is not the majority vote
15 and there are dissenters' rights and if you follow them, you can
16 do it. There's nothing -- you know, it's possible to be done.
17 It is also possible, since even the discussions of people who
18 wish the opportunity or the option of moving corporate assets
19 from the corporate form to the IRA and they were also, in there,
20 concerned about -- would the benefits of the Alaska Land Bank, et
21 cetera, track and would the other benefits of ANCSA, the other
22 built-in... the present built-in tax moratorium, would they
23 track? I believe, if I've got this right, Charlie, that one of
24 the discussions and one of the resolutions was to make sure in
25 the legislation, that if you have -- if you wanted as a viable
alternative that you were going to move assets from the present
structure to another one, that some of the statutory provisions
continued. Your problem is that, I believe the way ANCSA is
written, that some of those provisions tend to be tied to the
ANCSA corporations themselves or land received under ANCSA, and
once it's in the corporation that's sort of the end of it. But
you could... I mean AFN has tried to build into their resolutions



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1 the idea that you would build in the tracking mechanism so they
2 would move over.

3 MR. BERGER: Yes, well, without
4 anticipating...

5 MS. JOHNSTON: Okay.

6 MR. BERGER: ...what the
7 resolutions say...

8 MS. JOHNSTON: Okay.

9 MR. BERGER: ...I think it helps
10 if we understand the kind of -- what's out there now...

11 MS. JOHNSTON: Okay.

12 MR. BERGER: ...and I didn't
13 follow that...

14 MS. JOHNSTON: All right.

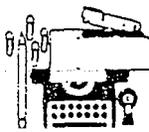
15 MR. BERGER: ...point that you
16 just made.

17 MS. JOHNSTON: As I understand
18 it, right now, and I'm sorry I don't have ANCSA with me so I
19 could check, but as I understand it right now, the tax moratorium
20 provisions and some of the Alaska Land Bank
21 Protection...squatters rights, being in my view, a particularly
22 important protection against squatters rights, would not apply
23 unless your land was held by an ANCSA corporation. Now this
24 could be cured. I mean that's something that could be cured.

25 MR. BERGER: Yes. I see, so
transferring the land as Glen suggests to a cooperative might not
bring the Land Bank protection with it, is that the point?

MS. JOHNSTON: Yes. That's
correct but you could cure it and there -- that could be handled,
I think.

MR. BERGER: What about taxation
of land held by cooperatives? Is it exposed to taxation by the
State?



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1 MS. JOHNSTON: I know a very
2 little about that, so I can't comment.

3 MR. BERGER: David.

4 MR. CASE: Yeah, I don't know a
5 whole lot either, but I have looked at this a bit and as far as I
6 can tell, cooperatives are taxable. They're not even like
7 non-profits which, if they're using the land for non-profit
8 purposes, I guess wouldn't be taxable under most municipal --
9 wouldn't have property taxes and of course they do pay income
10 taxes. Cooperative associations -- one thing to know about them
11 is that few people know much about them because they're very
12 unique. They're a unique organization. They kind of mix
13 coporations and non-profit attributes. One intriguing thing
14 about them, and I'm just going to be throwing out a few
15 intriguing points I suppose, is that it is possible, as probably
16 you know, to convert a profit corporation into a cooperative
17 association by a -- I think it's a two-thirds vote of the
18 shareholders changing the corporation, the articles of the
19 corporation, from a profit corporation to a cooperative, and
20 there aren't any dissenters' rights as far as I can tell. You
21 just change the form of the organization and it becomes a
22 cooperative. That's only good if you're not transferring assets
23 from one corporation to a cooperative. Once you start to
24 transfer the assets... and of course you've got the shareholder/
25 dissenters' rights problems and the super-majority vote
requirements. One thing I think that may be implicit in this
discussion of cooperatives, is that they are not -- I mean sort
of slide around in the language from shareholders to
associations, to members. Well cooperatives aren't generally
stock corporations. You can have stock, capital stock issued in
a cooperative but generally the evidence of membership is
memberships. It's -- and the good thing, I guess, or the extra
that goes along with this in terms of 1991, is that it can be

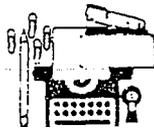


1 opened to people who were born after 1971, because since there's
2 no stock ownership then there is no asset to which you attach --
3 which you can dilute. The cooperative is owned by all of its
4 members. Bankruptcy of course -- there's no protection for the
5 cooperative against bankruptcy as the headlines today for... with
6 respect to Matanuska Maid informed us all. So, as long as the
7 cooperative is not in business, then I suppose that's true unless
8 its assets exceed its liabilities or it can't -- presumably it's
9 got to have some assets in some way to make -- to keep an office
10 or something open. But it would be subject to the same risks of
11 insolvency as any other corporate body, which it is. But it has
12 some intriguing attributes of both corporations and can be in
13 business. And of course there are cooperatives in business but
14 on the other hand it is an association that is member designated
15 by membership rather than stock ownership which could be a
16 vehicle for addressing the "new Natives" issues.

13 MR. BERGER: Charlie Johnson.

14 MR. C. JOHNSON: Yes, a question
15 relating to what Liz was talking about. Say, if the protections
16 that are in ANILCA don't track with any transfer and say, for
17 example, a village or any corporation right now, transfers its
18 assets -- I missed part of that conversation when I was coming in
19 -- say it transfers its assets to another body, a cooperative
20 perhaps, and say that the village corporation gets in financial
21 trouble, does that also mean you could lose -- that the assets
22 that are transferred would also be in jeopardy?

23 MS. JOHNSTON: Charlie, the trick
24 is, when the asset -- let's presume all the right procedures are
25 gone over, okay, and you move the assets from the village
corporation over to here, the trick is who owns this entity over
here? If the village corporation continued to own it, yes, those
assets could be in trouble, because you would have what I would



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1 view as a parent/subsidiary relationship. Am I saying that
2 right?

MR. C. JOHNSON: Yeah.

3 MS. JOHNSTON: Okay, so however,
4 if you're doing it more along the lines that David and Glen are
5 suggesting, it could, again, assuming the right procedures are
6 followed, just because the village corporation got in trouble,
7 didn't mean the cooperative would get in trouble because they are
8 now two separate entities because the cooperative is owned by
9 this set of people over here. It's not owned by the village
10 corporation.

11 MR. C. JOHNSON: Irregardless, if
12 it's the same set of people, it would -- you could build in those
13 protections in a transfer of assets, is that correct?

14 MS. JOHNSTON: I think you could
15 if you did -- if you went through the right procedures in the
16 transfer depending on what we're doing here.

17 MR. C. JOHNSON: Good.

18 MR. BERGER: David and then
19 Monroe Price.

20 MR. CASE: Another question
21 though, that may come up is: To what extent do you want to
22 maintain continued control or relationships -- or who's going to
23 be in charge between the village corporation and the cooperative?
24 If the cooperative controls assets that the village corporation
25 at some point wants to use, and they're separate, then of course
you may have the problem at some point that the cooperative won't
cooperate with the village corporation. But the risk is that if
they're joined together as it was suggested, the assets could be
at risk.

MR. BERGER: Yes. Monroe Price
and, alright, Charlie and then...



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1 MR. C. JOHNSON: Knowing nothing
2 about cooperatives, say that the land is transferred to a
3 cooperative or some similar, can that conduct business with, say
4 development or a sale of the land, then, without getting itself
into any trouble?

5 MR. TAYLOR: Would it be as you
6 mentioned the same jeopardy as a corporation? Really the only
7 difference being that a selected membership rather than a stock
that could be transferred. Is that the only benefit?

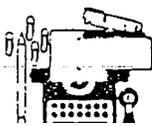
8 MR. CASE: That's correct. I
9 mean it would not be subject to a corporate takeover. They
10 wouldn't have that risk because it would be a membership and, you
11 know, the takeover would have to meet the criteria for membership
and you couldn't do it. But...

12 MR. TAYLOR: Is that the only
13 benefit then of, say, establishing a cooperative as the ability
14 to select the membership or as with stock and the corporation you
cannot select membership?

15 MR. CASE: Right, I mean... well,
16 I'm not sure that's the only benefit, John. I'm not saying I
know everything about these...

17 MR. TAYLOR: That's the primary
one as I am beginning to understand it.

18 MR. CASE: Yes. That is one
19 primary benefit is that it is a membership organization instead
20 of a stock corporation and that frees up and gets you away from
21 the "New Native" problems. It also separates the land from the
22 corporation but does not, in and of itself, protect the land.
23 The other benefit, I guess, is meaning the major one, is that it
24 seems that it eliminates the corporate takeover problem with
25 respect to the land because there's nothing to take over. You
can't buy stock in the cooperative and take it over and you have
to qualify as a member to get into the cooperative, so,



1 Mitsubishi probably wouldn't make it. That means -- maybe those
2 are the two principal benefits and bears more looking at,
perhaps.

3 MR. BERGER: Monroe and then Glen
4 and then Drew and then Tony.

5 MR. PRICE: I'll pass.

6 MR. BERGER: Okay. Glen do you
want to say something?

7 MR. FREDERICKS: Oh no, I -- Dave
8 answered that, what I was going to suggest to Charlie, he
answered.

9 MR. BERGER: Drew Hageman, did
10 you want to get into this?

11 MR. HAGEMAN: Yes. Particularly
12 to address the issue of "the David Case"... a situation of the
13 un-cooperative cooperative. Is indeed the land bank concept an
14 option that could be pursued that would avoid some of the issues
15 that you've raised, David? Is that -- is, you know, I guess that
16 -- I back up and say, when Tom mentioned this morning the major
17 issue confronting us is hanging onto the land, does that "hanging
18 onto the land" mean ownership or does it mean control, or is it
really a difference. Is it control or usages that we are
19 particularly concerned about? And does the Land Bank help in any
20 of those things?

21 MR. CASE: Well, if you don't
22 have ownership then there's a bit of a good chance you're not
23 going to have control. So, I'm not sure the two are separate.
24 Okay. But, the Land Bank, I suppose, gets you to some of these
25 -- I mean it protects the land. But if the corporation owns the
land that's in the Land Bank and the corporation is taken over,
and the 10 years pass or the 5 years pass or the period the land
is in bank -- well bingo, the people who've taken over the
corporation now take the land out of the Bank, presumably, and



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1 probably time their takeover so that it doesn't happen too far in
2 advance of the time the land becomes available. So, the Land
3 Bank really won't protect you from corporate takeover problems
4 and it doesn't do anything to address the membership, but it does
5 give you some protection. It doesn't do anything to address the
6 "New Native" problem at all.

7 MR. BERGER: If the Land Bank is
8 supposed to give you protection against taxation, to put it
9 boldly, isn't that what...

10 MR. GARBER: I think that there
11 are three specific purposes for the Land Bank. For Native
12 corporations, Native entities that received land pursuant to
13 ANCSA -- and that's the provision that Liz was talking about.
14 So, if you are not an entity that received land pursuant to ANCSA
15 and you've received it from a corporation, you don't get under
16 those three special privileges; and that is that you are immune
17 from property taxes for the period of time the land is within the
18 Land Bank and while it's in, you can not develop it. You can go
19 search for minerals and other things but you can't -- you can't
20 develop it for other purposes. You are protected against adverse
21 possession. Now, these three things were... the reason the Land
22 Bank provision was passed initially was to protect this period of
23 time before 1991. Problems that occurred right then, because --
24 and then -- and also they -- the taxing provision applied in the
25 future as well, in part. Now, the third thing is that -- and I
don't know exactly how we managed this -- but you are also
protected against certain state and federal judgments. You're
protected against creditors, so there can not be some limited
varieties of forced sales. So, there are three protections there
that are limited and they don't have anything -- they don't --
they only happen to apply to outside people who are trying to get
at the assets. Not through the stock holdings, but through other
secondary effects.



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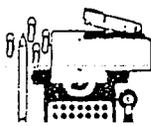
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1 MR. BERGER: Could I ask a
2 question, Elizabeth, just before we go on? Bart, you say that
3 the Land Bank gives you protection against seizure of the land
4 for failure to pay certain judgments or corporate debts. Well,
5 if when the land comes out of the Land Bank, the judgement is
6 unpaid presumably, the land can be attached then?

MR. GARBER: Yes.

6 MR. BERGER: Elizabeth, you
7 wanted to add something and then we'll go to Tony Strong.

8 MS. JOHNSTON: I just wanted to
9 add that that's why, in my view, I would like to see a combi --
10 or at least, probably for Bristol Bay, like to see a combination
11 of use of restricted stock together with the strengthening of the
12 Land Bank, because if you have the restricted stock you keep the
13 control with people who are going to be evaluating how they want
14 to use the land for their own purposes, and if the Native
15 community within Bristol Bay changes and they switch it over to
16 some other criteria other than subsistence, then so be it. If
17 they don't, then also, so be that! But they could make, you
18 know, decisions on whether to put things in or out of the Land
19 Bank. When you're dealing with land and some of our villages
20 have a hundred thousand acres, that's a lot of land when you
21 think about trying to police it for purposes of seeing who's
22 trespassing, who's acquiring -- accruing, I almost want to say
23 squatter's right's, it's a wonderful provision to reduce the
24 burdens of having to patrol the land. And obviously in this
25 state, those of you [who] have been here a while, know that there
is a continuing pressure on the state legislature level for the
rural areas, "to pay their fair share of real property taxes."
To the extent that three years ago there was a bill introduced
whereby all the -- what do you say -- unincorporated borough
areas would be, in effect, made a mini area, I guess
encompassing two-thirds of the State of Alaska. And the state



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1 legislature would function under this bill as a municipal
2 assembly and set the mil rate -- and then you would have state
3 employees running all over the state valuing both the property
4 out there, be it raw land or be it land that's being built on and
5 is producing income. Now, there -- as this state continues to
6 change and evolve, there will be more and more pressure, I
7 believe, at the state legislature level for taxation to be put in
8 or on the Bush -- in the Bush areas, whether or not they decide
9 to have first or second class cities and as there is that
10 pressure, it would be indeed a wonderful thing for the Land Bank
11 or some other kinds of protections to be able, so that Native
12 corporation lands, which is set aside for subsistence, doesn't
13 have the nonsensical burden of real property taxes when you are
14 not generating any income with which to pay it. That's the very
15 nature of having lands set aside for subsistence. And the last
16 thing about the judgment of course is, that's a little weaker
17 protection because, of course, it's only if you haven't pledged
18 the land that that protection would occur and that's a very
19 important thing, particularly when you're dealing maybe with less
20 sophisticated peoples.

16 MR. BERGER: It's a barrier
17 against execution of the but --

18 MS. JOHNSTON: It's a barrier
19 against execution provided you've not pledged the land.

19 MR. BERGER: Yes.

20 MS. JOHNSTON: So, it's for
21 unsecured debts...

21 MR. BERGER: Yeah.

22 MS. JOHNSTON: ...that the Land
23 Bank is a protection.

23 MR. BERGER: Tony Strong.

24 MR. STRONG: Thank you, I've been
25 enjoying this discussion. The most recent discussion,



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1 particularly, and I hope that a lot of it would wind down so I
2 could make some suggestions here. I've heard a lot of discussion
3 of problems that we're heading into and I'm sure that some people
4 have some solutions that they can suggest, but I've heard nobody
5 make any suggestions for us to consider and -- I mean although I
6 have heard, I've heard Glen make his suggestion and a couple of
7 others. And what I have to say, I think Tom has heard it before,
8 so, excuse me for repeating myself. One other couple -- I need
9 to make a couple of observations first, before I go into it.
10 It's been published recently that about 24% of the shares that
11 are held by the corporations in this state or the Native
12 corporations in the state are held by non-Natives already by way
13 of inheritance and divorce and things of that nature. So 24% of
14 the shares being held by non-Native already, it does have an
15 effect on the outcome of the ownership issue. I don't know where
16 that 24% figure came from. I read it in a recently publication.

13 MR. BERGER: I think it's the
14 1985 study, but isn't it 24% of the shares transmitted since '71?

MR. STRONG: Yes.

15 MR. BERGER: That's still a
16 sizeable block.

17 MR. STRONG: It's a sizeable
18 block, yes. Part of my suggestion is going to address that.
19 Part of the difficulties that I've seen people having in
20 communities... and a lot of the communities that I've had some
21 contact with, and having taught at the University -- in Bart and
22 David's previous positions -- I've talked about this with the
23 students that I'd had in my classes and that... I believe that
24 Jack had alluded to it as well, is that when these corporations
25 were set up, when 1971 came about and corporations were
authorized to be set and corporations were, in fact, set up by
the village corporations and the -- or by the villages and by the
regions, what they set up was another foreign structure in the



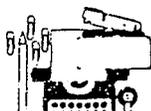
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1 community and what -- "foreign" meaning that they had never had
2 experience with it before and they had to make some adjustments
3 and there are some monumental adjustments that were made and some
4 them were very successful and some of them less so. I saw that
5 these structures have an effect on the outcome of the decisions
6 that are made in the communities.

7 I think there is a political -- at least one or more
8 political scientists here that might be able to address this more
9 thoroughly, but to me a structure that is set up for making
10 decisions in the community, when it's developed over a long
11 period of time, people learn to expect certain kinds of outcomes
12 when you submit a problem to the structure. When you submit a
13 problem to the organization you can expect a certain kind of
14 outcome. But when you superimpose a new structure on to the
15 community and submit a problem to it, that problem is going to
16 come out with a different solution than you would expect. There
17 are a couple. I can give you a real simple reason for it. One
18 is that in corporations or in municipalities, the decision is
19 often left to one individual, either the corporate president or
20 the mayor, whereas historically in a lot of the Native
21 communities the decisions were made by large groups of people and
22 the process for coming to the decision went through a lot of
23 different people so that there was some kind of consensus by the
24 time the solution was reached at. There were people who knew
25 what to expect out of it and had some sense that they
participated in it. But when you leave the decision to one
individual, they not only don't have the collective input, but
they're not making decisions that are necessarily for the benefit
of everybody, although they may perceive themselves doing that.
I say that that has a substantial impact on the community,
raising levels of social dysfunction that are brought about by
high levels of anxiety not knowing what to expect from their
organizations. Those social dysfunctions meaning, higher levels

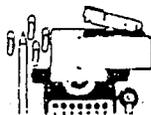


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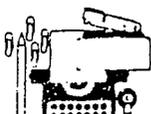
1 of alcoholism, higher levels of self abuse and abuse of others,
2 and I think that there's a lot of evidence for that taking place
here in the state.

3 I've heard some people making statements here also
4 that, well -- let me state another problem. One of the problems
5 that I've seen through a lot of the village corporations on a
6 smaller scale, a village corporate level. The size of the family
7 has a substantial impact on the outcome of the votes. I know in
8 Southeast Alaska that some of the village corporations -- and I
9 think this is true for a lot of the village -- or the village
10 corporations up North as well, is that those village corporations
11 are controlled by one family and they have historically been
12 controlled by one family because that one family is the largest
13 in the village. And those people who are perhaps the minority --
14 in other words, they have enough people to get enough family
15 members to be able to get one or two members on the board, are
16 always in the minority and they'll never be able to have a
17 substantial impact on the corporate decisions. There are some
18 members of the village who don't have enough family members to be
19 able to get anybody, any of their family, on the board. So the
20 benefits are oftentimes accrued around the largest family. It
21 appears that way both in fact and it appears that way by people's
22 perception. So, there's higher levels of frustration that are
23 faced by those people as well. And I've heard the argument made
24 that land is equated to heritage. I feel that those people who
25 are -- who don't feel like they're part of a decision-making of a
village -- of the village corporation or the village -- well,
just of the village corporation primarily, I think that that
argument is real tenuous to them. That they're looking at
themselves that they don't have any voice in the corporation.
The decisions of the corporation are made absent their input.
They haven't gotten a benefit of any value or any of the real
benefits that come from the corporation. They don't have any --



1 I don't see them having any real desire to hold onto their
2 village corporation stock. I think that that has to be discussed
3 a little bit more as well.

4 All this leads into a couple of suggestions I've
5 thought about and I've talked with some other people about, and
6 it goes along with what Glen had said -- and I believe there was
7 some other discussions here a little earlier. There's two
8 recommendations that I've voiced in the past on ways of dealing
9 with several of the problems that we've talked about. One
10 recommendation is, and I'm glad to see there are a lot of lawyers
11 here to be able to respond to it, because it involves real
12 property law issue or concept, and that is to have the stock of
13 the corporations held in a form of life estate. Now, that's a
14 real property issue or real property concept that's transferred
15 over to the stock ownership. Life estate means that they own it
16 during their lifetime. Upon death they transfer. I would say
17 that the corporation would get the land or that stock back. In
18 other words, as soon as the person dies, the corporation gets it.
19 What is the legal term for it? The corporation gets the
20 remainder, yes. And then the other suggestion I had was that
21 land -- and this goes along with something that Glen was headed
22 into except he was talking about [it] in terms of a cooperative.
23 I think that land being held by the Natives -- Native
24 governments, would achieve the same kind of results. With the
25 land being held by the Native governments, you need to be able to
still continue the economic force of the village corporation; and
I think there's a way of doing that and that is to have an
exclusive right of development in the corporations, in the Native
corporations. And I think you still have to address the issue of
people who do want to sell their stock. How do you address that?
I think that one of the ways that it could be done is to have the
sale of the stock back to the corporation. There are several



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1 problems that attended to that and I really would like to have
2 other people besides myself, putting some of their thought to it.

3 There is one other issue that I'd like this group to
4 consider as well and that is, in the Self Determination Act that
5 was passed in -- around the same time that the Claims Settlement
6 Act was passed, P.L. 93-638. What that act did, was to confer
7 upon the corporations tribal status. So, we have a problem or
8 not a problem, we have a situation where a tribe has to go to a
9 regional organization acting as a tribe. Tlingit and Haida
10 Central Council for instance, has to go to Sealaska Corporation
11 and ask Sealaska to, every so often, pass the resolution
12 authorizing Tlingit and Haida Central Council, to be the tribal
13 governing body for purposes of 93-638. I think you have the same
14 situation here in Anchorage, where we have CIRI Corporation
15 acting as the tribal governing body for purposes of 93-638 and a
16 couple of other organizations in the competitive position and
17 reaching some levels of frustration surrounding that. Thank you.

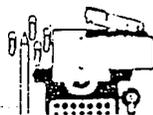
14 MR. BERGER: Thank you, Tony.

15 Well that's a series of interesting proposals. Could I ask you a
16 question about the first one? You said that the stock would be
17 held as a life estate by each shareholder.

17 MR. STRONG: Uh-huh.

18 MR. BERGER: How do you get from
19 A to B, I mean, how do we get from the point where the stock is
20 held now as alienable in the hands of the shareholder to the
21 point where it's held in a life estate?

22 MR. STRONG: Thank you. There
23 are a lot of questions that surround it and that is certainly one
24 of them. There are a couple ways -- seems to me, there's a
25 couple of ways to doing it. One is, it may require -- and I
haven't really thought about this enough to say that it does
require an authorization from Congress to do that. It may be
required simply on the grounds that if we look at the ownership



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1 of the stock as we hold it now, it's non-alienable. If we say
2 that in the future, 1991, it becomes alienable and therefore it
3 becomes vested and to take away that vested right we've got to
4 compensate the individual. Then it may require an act of
5 Congress to do that. But if the stock is not considered to be
6 vested at this point on the reissuance of the corporations stock,
7 in 1991 you could put in that restriction. I mean, I think that
8 there is some flexibility both in ANILCA and in ANCSA that allows
9 the corporations to go ahead and do that even with absent any
10 amendment.

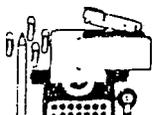
8 MR. BERGER: You mean when the...

9 MR. STRONG: And then -- excuse
10 me, and I'll go a little bit further in explaining that concept.
11 Every individual who was born with whatever definition you define
12 a Native, everybody -- every individual that was born a Native
13 would get issued a certain percentage of the stock or certain
14 number of shares; if we want to go with a hundred shares that
15 means that to me that would provide perpetual ownership of the
16 corporations in Native hands. At the same time it addresses the
17 issue of those people who were born after 1971. How do they
18 become shareholders? I think that at that same time it addresses
19 that issue.

17 MR. BERGER: That's one way of
18 converting the corporations into perpetual membership
19 corporations. That's what you're trying to do?

20 MR. STRONG: Yes.

20 MR. C. JOHNSON: I have something
21 I'd like to ask Tony. In your comment about compensation for the
22 transfer of or the change of the stock from -- as it now is, to
23 the life membership stock, would it not be true that those that
24 might object to that kind of stock exchange, might be those that
25 would want to sell anyway and that the compensation might be just



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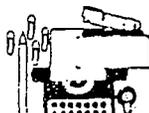
1 to buy those people out that would otherwise want to sell or and
2 object?

3 MR. STRONG: That's why I
4 recommended that some kind of compensation be made for those
5 people who would have an objection. It would be like a
6 minorities right to -- what is it called here, dissent -- you
7 know a dissenter's right. The same brief basic principal would
8 be used for that, yes.

9 MR. C. JOHNSON: Can I make one
10 more comment on -- and maybe it's kind of a question and I don't
11 know what the answer is. Earlier, Tony, you were talking about
12 the percentage of those that -- of stock that has been
13 transferred since '71. Approximately a quarter of that's gone to
14 non-Natives and I really wonder if that's partly a definition
15 problem and to what extent is that a definition problem? I know
16 in the retreats that we had to come up with the resolutions that
17 we're going to discuss tomorrow at AFN, one of the most discussed
18 points was the blood quantum of participants in the Land Claims
19 Act. And we had some very, I guess, interesting discussions; "I
20 guess" is a good term for it, on what the blood quantum should be
21 and at one point there was people that were saying: "Your
22 Nativeness is not dependent on your blood quantum and that you
23 are a Native at heart." I guess that's fine, but how do we go
24 back to Congress and say, "Let's preserve these lands for
25 Natives, but oh well, let's change it, let's make it only Natives
at heart." Well that includes a whole hell of a lot of people.

MR. STRONG: It may exclude some
people who think that...

MR. C. JOHNSON: Yeah, and he
says it may exclude some too, but, I would really think or I
would like to see some statistics somewhere and I don't know
where we're going to find them unless we do an examination of the
change in stock -- those transfers, how many of those transfers



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1 that are counted as non-Natives are actually part Native or
2 descendent of Natives?

3 MR. BERGER: I think an awful
4 lot, because I find in the villages people are concerned about
5 that. They say, my children are my children and yet they do not
6 qualify as one quarter Native, so they're excluded. They may
7 have the stock by inheritance but they can't vote it or they may
8 be ineligible in any event.

9 MS. JOHNSTON: Tom, could I...

10 MR. BERGER: I think that's one
11 of the problems with establishing a blood quantum qualification
12 in any statute. I don't know if there's any alternative to that
13 but -- now it's there. Elizabeth...

14 MS. JOHNSTON: This isn't a
15 particularly abstract answer, but as to Bristol Bay -- and again,
16 that's the only facts I really am on top of -- we have right now
17 5300 shareholders. Of those 5300 shareholders, 74 are
18 non-Native. Out of those 74 who are non-Native, 49 or about
19 two-thirds are blood related, in other words, they're -- the
20 children, the parents or the grandchildren of the individual who
21 died; and obviously all the reason they're thrown into the
22 non-Native category is because they missed the blood quantum.
23 Another 22 are relatives by marriage, and that means in-laws or
24 spouses and, then two of them belong to other categories,
25 institutions. So, two-thirds of the non-Native shareholders of
Bristol Bay, as of today, are in the non-Native category because
they missed the blood quantum, and the bulk of the rest are in
the spouse category and might have just missed the blood quantum
or might be totally non-Native, and that I don't know.

MR. BERGER: Bart.

MR. GARBER: Yes, before we get
too far away from what Monroe was talking about this morning, and
with the Gettys and the idea of having an interest, and it kind

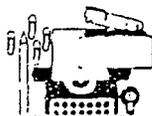


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1 of coincides with something that I've thought about. So far
2 today we are talking about the maintenance of control over
3 corporations and the assets by looking about redistributing
4 assets or else perhaps putting restrictions on stock. There's
5 one idea that may not apply and I grant it, it doesn't apply in
6 all situations and I haven't been at a lot of the -- I haven't
7 been at any of these White Mountain meetings talking among these
8 different people so, I'd like to see some comments if it's just
9 totally off the wall or not. Is there -- are there some
10 protections that may actually be provided if we loosen some
11 restrictions within certain bounds? I'm talking about allowing
12 stock transferences in limited situations until 1991, which will
13 allow us to realign ownership if that's what we want to do, but
14 within certain perimeters. The one thing I'm thinking about --
15 and it allows us to be able to find out, really, where the
16 political constituency lies before 1991 -- because it seems to me
17 our problem is determining what do the individual think and that
18 the individual shareholders have the problem because they feel
19 like they're left out. They don't know, "how in the world do I
20 make myself, make my position known." Is it possible to allow
21 individuals if they want to, to transfer their stock to a tribal
22 group or to a membership corporation or to a group that provides
23 a political strength for them acting within the body of ANCSA?
24 This gets around the problem of losing immediately the ANILCA
25 protections and what not, because the assets would still be owned
by a state corporation, but you would also have the protections
of having potentially a very large ownership block. Now there's
down sides to that. You have problems with maintaining one
certain block of control and also, if you ask Congress, of
course, to open up this stock transfer, you may not be able to
open up only the small amount that you want. I know that there
are down sides but, I'd like to see some discussion. There are
some things that I can see it address. By transferring over...

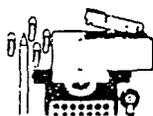


1 let me just get one other thing. By transferring over, you and
2 the tribe or you and the membership corporation can enter into a
3 contract to retain certain rights; that may be possible. I'm not
4 certain. You may retain the right to dividends, whereas control
5 goes to another group over the voting but you have certain
6 returns. There could be any body of things. If there's
7 something that inherently just destroys this premise, I'd like to
8 know our particular down sides.

9 MR. BERGER: Well, one down side
10 I -- is the one you pointed out. That if you want to open it up
11 for transfers before 1991, it might be hard to say the only
12 transfers you can make are to the tribal government or the
13 cooperative or whatever. It might be said, if this is an act of
14 individual self-determination that you want, people should have
15 the right to transfer to anybody, not just to the tribal group.
16 But Bart, you had suggested earlier, I don't know if it's in your
17 paper, that people might leave their shares by will to the tribal
18 group... And if enough people made wills like that, that would
19 give some indication of what people want to do. That's a form of
20 self-determination, is that something they can do now? Surely
21 you can write a will now.

22 MR. GARBER: That's why I say,
23 yes, we have the fear that Congress will open it up to all kinds
24 of things, but I don't see that proposition is anymore obtuse
25 than to go to Congress and ask them to stop everyone from
alienating stocks; and it's true, as far as I can see, there's
nothing that stops people now. Elders who are leaving the earth
to leave their stock to whomever they want. They have the
absolute right in their stock wills to give it to who they wish,
their children, their tribes, whatever.

MR. BERGER: Yes, Claude
Demientieff.



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1 MR. DEMIENTIEFF: I have a
2 question that relates to the consolidation or the gathering of
3 shares under one umbrella such as the corporation or -- well,
4 more specifically the corporation. Doesn't this allow for an
5 easier hostile takeover for a company to go to the bank and say,
6 look at all these shares, they're all consolidated under one roof
7 now. There not amongst 5,000 people any longer. It's easy for
8 us to...

7 (NOVEMBER 14, 1984)

8 (OVERLAP TAPE A)

9 MR. DEMIENTIEFF: ...use that as
10 collateral, use our down payment. "Let's go get it!"

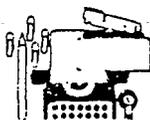
11 MR. GARBER: I mean, when you
12 read some of the shark protections and what not, I mean the
13 entrance that I'm making by giving it...

12 (NOVEMBER 14, 1984)

13 (TAPE 4, SIDE A)

14 MR. GARBER: ...over to a --
15 particularly a tribe, is that there is going to be a reluctance
16 on the part of that group to convey. If you can convince them
17 to, then they would of been taken over anyway. I'm thinking that
18 one of the ways to protect from a takeover is to have a
19 substantial minority or even a majority of stock, and then its
20 difficult to control, and that group inherently has a better
21 ability to withstand a takeover now. Let Monroe get in here.

22 MR. MONROE: I don't think I fully
23 understand your example so I can't answer it... and... but let me
24 make a couple of points. One of them is that, as we'll see in
25 the AFN resolutions, there is some suggestions that might be a
limited opportunity to have flexibility for the purchase by
corporations of individual stock prior to 1991. I think that
there are possibly healthy things that could be done prior to
1991. I don't think it's possible that the Native community



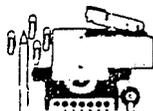
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1 isn't generally prepared. It's building its own expertise, and
2 its own decision making, and I don't know whether it's at a point
3 where it says these are the things that could be done prior to
4 1991, but if it were, there could be such things, and one of them
5 is the buy-back provision. Just as an example, on the elders'
6 problem, one might determine that of all people, elders, ought be
7 able to have some moderate cash-in; if you thought anybody would,
8 you might... elders might. You might not think that's true. You
9 may think as a safety valve, that individuals who wish to sell a
10 portion, 25% or 30% of the value of their stock, ought to be able
11 to do so, either before 1991 or after. The 1991 date is not an
12 important date there. But, it might help to resolve, and relieve
13 pressure on the 1991 question, if there was a mild and modest
14 door for some people to benefit to some extent. I want to make
15 it clear that -- and this gets back to what I was saying earlier.
16 This doesn't mean that everybody ought be able to sell, or that
17 everybody ought to be able to sell 100% of the value of the
18 stock, or that a Native corporation ought to be liable for an
19 amount up to the amount that everybody wants to cash in for. You
20 can divide anyway. You could say that a corporation could set
21 aside, could provide an amount up to X dollars, which is
22 available at a certain price for people to buy in stock -- and it
23 would be by age or by percentage of stock, or something like
24 that. That is something that could be done and it could be done
25 prior to 1991 and it could be of assistance in taking pressure
off the restrictive element of the post-1991 planning; that is to
say, if you have some small relief valve, it may be helpful in
allowing better thinking about what should occur after 1991. On
the question of the elders, or people willing their stock to the
Native corporations, without... if it were that... without
knowing what's going to happen if the Native context.

MR. BERGER: It was to will them
to the tribal government ...



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1 MR. PRICE: The tribal
2 government, or okay.

3 MR. BERGER: Then they
4 accumulate over time all the shares, and the problems of the
5 takeover would be avoided. That was what I thought it was about.

6 MR. PRICE: Okay. I don't have
7 anything to say about that, now that I understand it.

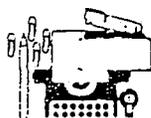
8 MR. GARBER: Monroe, the reason I
9 brought it up, is because you talked about the Getty Trust.

10 MR. PRICE: Right.

11 MR. GARBER: ...and that the
12 advantages of the Getty Trust, being a minority holder and in a
13 larger group and having control. My analogy is that a tribal
14 group thus has certain values that it establishes, but it can
15 work within a larger foreign group but still maintain a semblance
16 of control, and also consolidate power that otherwise might just
17 be dissipated by people just feeling helpless and allowing
18 individuals then to express what it is that they felt and putting
19 substance behind it.

20 MR. PRICE: This goes to something
21 that Elizabeth said earlier, and again, I think it's important
22 to have someone with expertise on corporations. You could
23 conceive of a situation in which the tribal government held
24 preferred stock in a corporation, or the common stock and the
25 currently held the other. Then the question would be what are
the rights of the preferred stockholders? I think one can build
in certain protections, or certain limitations on the actions of
the corporation either as a creditor or a preferred shareholder,
that do constitute the kinds of controls that may be desirable.
One could do that and still maintain a market in common stock.

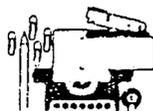
MR. GARBER: Well, I guess the
reason I proposed mine is that I thought that you could have any
variation of restrictions. My idea is that you would have people



1 being able to participate within a state corporation, as a tribal
2 body along side others who chose not to do that, and kept their
3 stock holdings, and assuming that they could go ahead and sell;
4 but the power of it is, is that you will at least find out before
5 1991 comes along where is the vote going to be? Where's it going
6 to be drawn? If you do have a non-receptive Congress at that
7 later date, then you at least have inherent protections
8 hopefully... not hopefully, one way or the other. You will know.
9 You will not diminish the rights of the individuals because
10 they'll still own their stock and they'll have whatever relative
11 power that they have, because of their individual holdings, but
12 you won't diminish the interest of those people who have more of
13 this group feeling simply because they aren't organized, or
14 haven't been able to find the way to organize or have a way to
15 have the traditional land owner have an impact on the land
16 management decisions of a state corporation. It's an idea that
17 -- I don't know, that may have been talked about, I wanted to
18 find out. My idea is that it's probably going to be more
19 receptive in an area where the village corporation is viable
20 anyway. It's not going to matter what the distribution is if it
21 is not working, I suppose, or it may be.

MR. BERGER: Charlie Johnson.

MR. C. JOHNSON: I just want to
ask a question. It is kind of relating to what Tony was talking
about, and what you are talking about. Is it possible, under law
of any kind, that, say that the dissenters were issued a
convertible stock. At some point, in kind of a reverse fashion,
you know, it can be convertible into debt. Like for example, now
you go out and buy corporate bonds that are convertible to stock.
Is it possible to structure it in a way for those dissenters that
get some kind of preferred bond, that they can transfer to their
stock into? I don't know the answer, I'm just wondering that.



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1 MR. BERGER: I don't think anyone
2 is prepared to answer that, Charlie. Glen Fredericks.

3 MR. FREDERICKS: The only other
4 comment I would have is, of course, doesn't the Act itself, Bart,
5 say that we could divide the land and give it to the shareholders
6 equally? There is a provision in the Act, that we could divide,
7 if that is the desire of the people as shareholders. I was
8 thinking about [what] you said; then they could turn around, once
9 you issued a deed to them -- say my area is ten thousand acres a
10 piece -- why can't I get that document and then revert it back to
11 an IRA or different entity. I think there is a provision in the
12 Act itself already.

13 MR. GARBER: As the Act was
14 finally passed, Glen, I'm not aware of any specific authorization
15 for liquidation. There is always a possibility of a liquidation
16 under State law.

17 MR. FREDERICKS: Isn't there,
18 Elizabeth, there's...

19 MS. JOHNSTON: No, it's not
20 ringing a bell.

21 MR. GARBER: No. I don't recall.

22 MR. FREDERICKS: I thought there
23 was a place there, that says, Charlie, we could, if we had a
24 million acres -- we could divide it up, if that's the desire of
25 the people, to liquidate the land. We can liquidate the asset
very quickly. We know what it is -- cash assets.

MR. GARBER: I'm not aware of
anything like that.

MS. JOHNSTON: I'm not, not only
aware of it, in ANCSA, but again, if you did it under State law,
you'd want a vote of the shareholder, and you'd want, of all the
times, you'd want to disclose to the shareholders the
consequences of what they were doing and the meaning of what they



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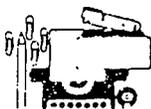
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1 were doing. It would in that... you'd never want to just do it.
2 Okay, it would be under State law.

3 MR. C. JOHNSON: If you were in my
4 position, I wouldn't want to do it, because I wouldn't last that
5 long. My theory is that the shareholders have to make those
6 decisions. Not the Board of Directors. There's no way in hell
7 the Board could make those decisions as far as I'm concerned.
8 You know, the people out there, that has to make the decision.
9 In the concept of this, putting the land aside too, the
10 shareholders have to make the decision. The only thing the Board
11 of Directors, as I see it, will have to do is go to the members
12 and say, "These are your options, you know, either sell out or do
13 something. These are the options. You make the choice."

14 MR. BERGER: Bart Garber.

15 MR. GARBER: I don't have all
16 that much faith, actually, in the idea I've proposed. More to
17 me, it expresses one theoretical middle ground, where you are
18 appeasing different interests. Where you don't deny someone
19 dissenters' rights if you do it, but you are allowing people to
20 go ahead and make an individual decision; but making individual
21 decisions, to opt for a communal holding if that is what they
22 want. It's a little bit repugnant to me, even just in some of
23 these votes, where you're denying dissenters' rights. In one
24 village, it's going to be -- you're going to be denying... Well,
25 actually, it doesn't make much sense when you have the dissenters
or tribal people, because I don't know what the vote would be
that that would come about, but you're always going to have an
out-group when you have a simple majority or even a
super-majority, when you may have a significant minority of
upwards of 25% of the people, not wanting to go along with
something that the corporation has. Now that... I know that
that's always going to exist. But, particularly in situations if
you've got dissenters who prefer an individual kind of property



1 right, but wanted to continue with the management of the
2 corporation, and you denied them the dissenters' rights, there's
3 a clear -- they're not going to be able to pull their assets out.
4 What troubles me is that the future management of that
5 corporation where you've created a minority there, who's really
6 not very happy with what's happening, and yet they are still
7 there. This kind of addresses a little bit, I can't remember if
8 it was you, Roland, who have talked about it, that there are lots
9 of people who -- that the corporations usually come together
10 because people have these common interests and that they run
11 fairly well, because they usually have common goals, and they go
12 on one direction. The problem is when you eliminate dissenters'
13 rights, you make the management of the entity afterwards very
14 difficult. You just constantly ruffle feathers and it will be
15 difficult to continue. So, if you can find some way, I don't
16 know about the substance of what you do, but somehow, that
17 somehow appeases two sides, and they can still find a way to
18 continue, but at least be able to express their feelings, rather
19 than just being chopped off; that's one of my concerns.

15 MR. BERGER: Gary Anders and Tom
16 Taylor.

17 MR. ANDERS: My question is, does
18 an economist really deal with the marketplace or Native stock?
19 It's not clear to me exactly how the fair market price would be
20 to determine, because of certain provisions within the Act
21 including 7(i)... Given that, as I understand it now, when the
22 time frame expires, and stock can be sold, I would like to know
23 what kinds of provisions can be built into the legislation to
24 allow more time for deliberation. Bart, earlier you mentioned an
25 analogy with limited entry permits. I think that's a good
example of mechanisms that allow for non-impulse sales of a
valuable asset and I'd like to know if you've done some thinking
with regard to the structure of the transfer process. In other



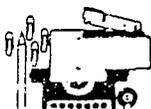
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1 words, how -- if in fact these shares of stock are going to be
2 sold in the market place -- what kinds of provisions can be built
3 in to give people more time to evaluate the range of choices that
4 are open to them, including putting them into a separate tribal
entity?

5 MR. BERGER: Elizabeth.

6 MS. JOHNSTON: The only one I'm
7 aware of, initially, was what was put into ANILCA where there was
8 the right of first refusal concept. It was my understanding of
9 that concept, was that it was not put in there because the people
10 who put it in felt that the corporations maybe realistically
11 could meet the fair market value that was being offered outside,
12 but rather that it was put in as precisely a mechanism to deal
13 with the impulse sale and also to deal with perhaps the question
14 of conflicting values and put in also to deal with perhaps
15 educating somebody about what the value is. After all, there's
16 two parades of horrors that could happen here. The first one
17 is that the Natives will lose control of the land, but the second
18 parade of horrors is that if they lose control of the land. In
19 addition, they will not even be paid for it. Neither one of
20 those is a particularly appealing prospect. So I think the right
21 of first refusal was put in as a mechanism to begin to deal with
22 the -- it was the only mechanism I know of so far that's been
23 discussed -- and again others can correct me on this -- but it's
24 the only one I'm aware of that's been discussed to try to deal
25 with the impulse sale, to try to deal with education of value if
somebody's been offered three dollars a share, and you know
perfectly well that in this corporation it's worth fifty dollars
a share, and the person being offered just doesn't happen to know
that. You can educate him on that and also of course, there
would be the discussion in the back room about perhaps you don't
want to sell your shares because of the total impact it would
have on Native control.



1 MR. BERGER: Has any corporation
2 adopted the ANILCA Amendments of the past resolutions, binding on
3 their shareholders, that required them to give first right of
4 refusal to the family or the corporation and so forth?

5 MR. FREDERICKS: We have...

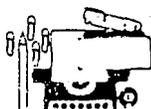
6 MR. BERGER: I see...

7 MR. FREDERICKS: ...in the annual
8 shareholder meeting about two years ago. We put the provision
9 in. We also have a provision in our bylaws that if there is a
10 corporation by our area, out there, that is ready to defunct, and
11 about to lose their land, we have, the Board was given the
12 authorization from the shareholders to negotiate for that land.
13 Now it's up to the Board, then, to go to this village corporation
14 and make a deal with them and my idea there was to give them
15 non-voting rights. Why should I give them voting rights if
16 they've used up all their assets? The only thing that we were
17 trying to do was to protect their land and they would only have
18 vote on their land if we were to do something on it. We have
19 that already in our bylaws. So anybody that's going under, tell
20 me. We can make a quick deal.

21 MR. BERGER: John Taylor and then
22 Charlie Johnson.

23 MR. TAYLOR: Yes, Bart. You
24 sparked an idea and I wish Dan Fessler were here so I can get
25 some feedback on it. But as you were talking, it sounded to me,
initially, as if you were talking about a modified voting trust
of some kind. Maybe that's an idea that we ought to explore
more, because I know in Dan's recommendations for the new
corporate statues, he addresses that again. But maybe there's
more to be looked into in that particular area in State corporate
law to sort of get at the direction you were going to.

MR. BERGER: Charlie.



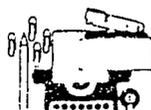
1 MR. C. JOHNSON: I'll pass.
2 That's a more interesting one that I was going to ask anyway.

3 MR. BERGER: Elizabeth.

4 MS. JOHNSTON: The only concern
5 as we thought it through on voting trust was the concern that
6 somehow, on one hand, it might do what Bart is talking about,
7 which is be able to make a group that would be strong enough to
8 see if somebody offered to buy their shares, they would see the
9 consequences of selling. One of the problems, when individuals
10 own the shares, is it's sort of an incriminal thing, you know.
11 "It doesn't matter if I sell my shares. Surely Native control
12 will not be lost if I sell my shares." If you have a group, it
13 is easier to see the real impact if the shares go. But one of
14 the concerns we had at Bristol Bay about the voting trust or
15 similar ideas, was that it might harden factions. In the eight
16 years I've been at Bristol Bay, factions have shifted and changed
17 and I tended to think that was good and the voting trust
18 situations often doesn't allow that to happen -- and that was in
19 an institutional sense, in terms of trying to build a strong
20 institution that could survive. I think that was our concern.

21 MR. C. JOHNSON: But that's also
22 one of the strengths, that counter-strength on the back side is,
23 if you do have a lot of running around between the minority
24 dissident group or something, and as Bart was trying to point
25 out. Then with a voting trust, you really lock that up very
quickly.

MS. JOHNSTON: Those who sign up
as dissidents in a trust initially, okay, because obviously you
cannot honorably, I think, go to Congress, and say we're only
allowing some people to go over in this group and those are the
guys on this good side. If you're going to open this up, you're
going to open it up to all sorts of factions. Okay. You've set
your factions and once your factions are set, once they signed



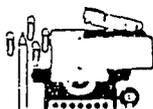
1 up, they're locked, and if three years later, suddenly management
2 looks good to them even if I'm part of that management, it still
3 looks to them, I'd love to see them be able to slip back, and
4 they can't.

4 MR. BERGER: Well. Charles.

5 MR. C. JOHNSON: Let me ask one
6 other question that has come up. It seems that one of the real
7 concerns, and we addressed this earlier, was not only control,
8 but ownership of land and maybe, Liz, you can answer this as well
9 as anybody. In the 7(i) agreement, is there any protection for
10 anybody where transfers of land might take place, irregardless of
11 who the stockholders are of any corporation, since between
12 regions, there is some provisions for scrutinizing any transfers
13 of land or asset or resources?

14 MS. JOHNSTON: Charlie, I can't
15 answer that, but if you wanted, I could get you an answer before
16 two more days pass. I'm sorry I'm not on top of the 7(i)
17 agreement, and there are a few other people in this room who
18 might be on top of it more than I am. I could find you an
19 answer, but I sure don't have it right now.

20 MR. PRICE: I would also require
21 at least 'til tomorrow morning to get a totally accurate answer.
22 I think one question is, certainly if 7(i) persists after 1991.
23 That's a major question, and the 7(i) agreement recognizes that.
24 Secondly, the sale of any assets that are subject to 7(i) would
25 trigger a distribution under 7(i) and one element of the
agreement was how to determine whether or not there was a fair
market transfer, transactions involving that, and the precise
aspects of that, is what we'd have to check. One other thing,
though, that is relevant, that came obliquely in the 7(i)
context, is whether decisions by a particular Native corporation
to restrict the value of assets subject to 7(i); also raise
questions with respect to other Native corporation that wasn't

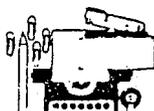


1 treated the 7(i) agreement. That is to say, let's say there is a
2 valuable asset in Bristol Bay Native Corporation. Rather than
3 sell it for below market value, they just basically restricted it
4 in a way that it means it doesn't produce value. That has
5 effects on other Native corporations. But, that I think is
6 within the province of the corporation. That isn't affected by
7 the 7(i) agreement.

8 MR. BERGER: Well, I think
9 that...

10 MS. JOHNSTON: I wanted to ask a
11 question that has been occurring [to] me again. Maybe no one
12 here can answer it, but this whole impact of 7(i). You know when
13 people come and they want to buy stock and take over assets the
14 mythical and hypothetical village corporation that Roland
15 mentioned is not burdened by 7(i); may be benefited by 7(j), but
16 it's not burdened by 7(i). The regional corporations' Land
17 Holdings are burdened by 7(i). What I was wondering was, if I
18 were sitting here in a shrewd takeover of assets, on one hand to
19 take over the regional corporation's stock, might seem to me to
20 be shrewd because I could acquire it in increments and nobody
21 would really, truly realize totally what I was doing until it was
22 too late. But on the other hand, would I really want to buy the
23 corporation's stock whereby that's how I got the corporation's
24 assets, and might have the burden then of 7(i); as opposed to in
25 the village situation. That just isn't operative and you follow
your strategies of trying to take over assets or take over
stocks, and thereby assets, any way you want it. I didn't know
Monroe or Tony or anyone else, Bart who might have a response.

MR. BERGER: It would be the
question of price, and I think if you found that there were a
number of takeovers of regional corporations, you would
strengthen the argument for going to Congress and saying, look,
the original reason for 7(i) was to share the wealth among the



1 Native people; now they're out of it, so let's go back to free
2 enterprise, as we really know it. On the other hand, some of
3 them might regard 7(i) as a attractive feature.

4 MR. PRICE: Well, I think that
5 some people would be buying corporations for the rights to
6 receive benefits from other Native corporations. For some Native
7 corporations, one of their most valuable assets is revenues from
8 other Native corporations.

9 MR. BERGER: Buy a Native
10 corporation, divest yourself of all the assets and just sit there
11 and wait for 7(i) revenue. I think this has a tendency to go
12 round and round a bit; and we usually stop at about 4:15 or 4:30,
13 so perhaps you would just allow me to say a few words before we
14 adjourn and, Chris McNeil, I understand, you won't be able to
15 come back tomorrow. I want to thank you for coming today and
16 participating. Some of those who are not able to be here will, I
17 understand, be joining us tomorrow. The idea tomorrow is to look
18 at the AFN resolutions and talk about them and see if we learned
19 something from them and if the AFN might learn something from our
20 discussion on today's showing. Who can be sure? I would just
21 ask you, though, to bear a number of things in mind that seem to
22 me to be vital. I mentioned this at the beginning, but it seems
23 to me that the bedrock of what's going on here, is the the desire
24 of people in the Bush who regard their land as their people's
25 land to be passed on from one generation to the next to be
available for subsistence. That's the bedrock! If those people
weren't out there talking that way, we might not have very much
to talk about. I think we should bear that in mind. And how can
you protect that land against three things.

One is corporate failure by reason of activities that
the corporation may be carrying on having nothing to do with the
land. Glen Frederick's corporation might have a big series of
bad investments in Anchorage that threaten the land out in the



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1 Bush that its 1200 shareholders are using. Now that, it seems to
2 me, is something to be considered.

3 The second thing is corporate takeover. We'll spent a
4 lot of time on that. How do you protect against corporate
5 takeovers.

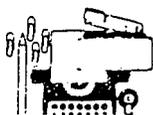
6 Third, what do you do with the land to protect against
7 corporate takeovers? Or what do you do with corporations to
8 protect the land that the corporations holds.

9 And the fourth thing, and I brought this up earlier but
10 I intend to bring it up again, is taxation. Elizabeth pointed
11 out that there may be a growing mood in the state to tax rural
12 land and, if so, what about subsistence land? It doesn't
13 generate revenue. It is not able to support taxation. If the
14 corporation that holds the land is unable to pay taxes, where are
15 you then? I think that in the course of our discussion we might
16 bear in mind Tony Strong's proposals.

17 Two of them, it seems -- he said: What about holding
18 the shares in a life estate? That didn't seem to fly mainly
19 because none of us know that much to put it together.

20 The second one: Land should be held by Native
21 governments with an exclusive right of development of Native
22 corporations. That may be reflected in some the AFN resolutions.
23 I don't know. And the sell-back to the corporations. As I told
24 you this morning, you have to think pretty hard about the sale of
25 shares back to the corporations because you inevitably will
create two classes of shareholders; two classes of Native people
-- those with shares and those without shares, but this time, not
an arbitrary judgement of Congress based on the age or the
particular date, but on the choices that people make and that
they may soon regret.

The only other thing I want to mention is that we are
having a roundtable in December. We devoted this one, or we're
devoting this, to 1991 and all that entails. In December, we're



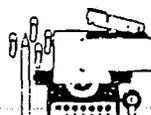
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1 having a roundtable to look at alternate approaches to Native
2 land and government and Ralph Johnson, who is here with us, is
3 preparing a paper to open a discussion on that; and we have some
4 people from the Lower 48 and other countries to come to talk
5 about how they're approaching these issues. But we thought it
6 was worthwhile looking at 1991 by itself, because, as I said
7 earlier and no one has been prepared to argue with me about it.
8 But this is a unique setup in Alaska. And so getting all these
9 other people from other countries, and confusing them might not
10 be helpful. So if it's okay with you, let's start again at 9:00
11 in the morning, and we'll look at the AFN resolutions.

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END OF SESSION

NOVEMBER 14, 1984



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